

TAXATION:

COUNTY WARRANTS:

{ Protested county warrants not exempt
{ from taxation.

June 27, 1935.



Hon. G. Logan Marr
Prosecuting Attorney
Morgan County
Versailles, Missouri

Dear Mr. Marr:

This is to acknowledge receipt of your letter of June 25, 1935, with request for an opinion, which letter is as follows:

"Since the county budget law, has been in operation, county warrants, protested, are selling at par on a ready market. This use to be unusual. Protested warrants bring six percent. Now the county assessor has announced the policy that holders of county warrants must turn the same in on their assessment lists in order to pay a tax on these county warrants.

"Of course, county warrants have been considered like municipal bonds, exempt from state and county taxation. Protested warrants pay 6% from date of protest, but are redeemed under the budget law, before they get to be one year old. The tax rate for a property tax in the country, here is about 3%, and the tax rate in Versailles on property is 4%. It seems apparent that taxation of county warrants, will not make their sale very ready, and probably always below par.

"Are county, protested warrants, liable for assessment for taxation purposes under the Missouri Constitution and the Missouri law? Do these county warrants enjoy the same immunity as school district bonds, or municipal bonds?"

Your first question is - Are county warrants which have been protested liable for assessment for taxation purposes under the Missouri Constitution and Missouri statutes?

In answering your question we must look to the Missouri Constitution which contains the fundamental and basic law for all tax exemption, and Section 6, Article X, designates what property is exempt under the Missouri laws, and is as follows:

"The property, real and personal, of the State, counties and other municipal corporations, and cemeteries, shall be exempt from taxation. Lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, may be exempted from taxation, when the same are used exclusively for religious worship, for schools, or for purposes purely charitable; also, such property, real or personal, as may be used exclusively for agricultural or horticultural societies; Provided, That such exemptions shall be only by general law."

And Section 7, of Article X, reads as follows:

"All laws exempting property from taxation, other than the property above enumerated, shall be void."

In accordance with the constitutional provisions, the Legislature has enacted certain statutes relating to taxation and Section 9742, R. S. Mo. 1929, provides what property shall be taxable, and is as follows:

"For the support of the government of the state, the payment of the public debt,

and the advancement of the public interest, taxes shall be levied on all property, real and personal, except as stated in the next section."

Section 9743, R. S. Mo. 1929, provides what property shall be exempt by law from taxation.

Property is exempt from taxation (1) by the self-enforcing provisions of the State Constitution; (2) by state laws under the authority of the State Constitution; (3) by Federal laws; and (4) by failure of the Legislature to subject property to taxation.

In the case of State ex rel. Union Electric Light & Power Co., v. Baker et al., 293 S. W. 401, it is stated by the Supreme Court as follows:

"It is the well-settled policy of our law that taxes shall be levied and collected for public purposes on all property within the territorial jurisdiction of the state, except that expressly enumerated as exempt. Sections 1, 2, 3, 6, and 7 of article 10, Constitution of Missouri; section 12752, 12753, 12754, and 12756, R. S. 1919. It is equally well settled, however, that before property may be taxed it must by law be subjected to taxation. Valle v. Ziegler, 84 Mo. 219; Leavell v. Blades, 237 Mo. 695, loc. cit. 700, 141 S. W. 893; State ex rel. Am. Central Ins. Co. v. Gehner (Mo. Sup.) 280 S. W. 416, loc. cit. 419; State ex rel. Koeln v. Lesser, 237 Mo. 310, loc. cit. 318, 141 S. W. 888."

In the case of State ex rel. St. Louis Y. M. C. A. v. Gehner, 11 S. W. (2d) 30 l. c. 34, it is also stated:

"In the construction of laws exempting property from taxation it is a cardinal principle that they must be strictly construed. As a rule all property is

liable to taxation, exemption, the exception, and it devolves upon the person claiming that any specific property is exempt to show it beyond a reasonable doubt. It is in no case to be assumed that the law intends to release any particular property from this obligation; and no such exemption can be allowed, except upon clear and unequivocal proof that such release is required by the terms of the statute. If any doubt arises as to the exemption claimed, it must operate most strongly against the party claiming the exemption.' *Fitterer v. Crawford*, 157 Mo. loc. cit. 58 S. W. 533, 50 L. R. A. 191.

'As the burden of taxation ordinarily should fall upon all persons alike, when one claims an exemption therefrom he must be able to point to the law granting such immunity and it must be clear and unambiguous.' *Kansas Exposition Driving Park v. Kansas City*, 174 Mo. loc. cit. 433, 74 S. W. 981.

'Such statute and constitutional provisions are construed with strictness and most strongly against those claiming the exemption.' *Beach on Public Corp.* par. 1443; *Dillon on Munic. Corp.* (3d Ed.) par. 776, and cases cited; 1 *Burroughs on Taxation*, Sec. 70; 1 *Desty on Taxation*, p 108; *Cooley on Taxation*, pp. 204, 205.

"And very recently this court, by Walker, J., said: 'The policy of our law, constitutional and statutory, is that no property than that enumerated shall be exempt from taxation.' *State ex rel. Globe-Democrat Publ. Co. v. Gehner*, 316 Mo. 696, 294 S. W. loc. cit. 1018.

"A grant of exemption from taxation is never presumed; on the contrary, in all cases of doubt as to the legislative intention, or as to the inclusion of particular

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property within the terms of the statute, the presumption is in favor of the taxing power, and the burden is on the claimant to establish clearly his right to exemption.' 37 Cyc. of Law, p. 891; Galloway v. Memphis, 116 Tenn. loc. cit. 736, 94 S. W. 75; Willard v. Pike, 59 Vt. 218, 9 A. 907."

The rule as announced by these cases, which might be supplemented by numerous other authorities, is that no property is exempt from taxation except such as may be specifically exempted by law and the further cardinal rule of construction is that all tax exemption laws are to be strictly construed.

We do not find that protested county warrants are exempted from taxation either by the Missouri Constitution or by laws enacted in conformity therewith.

It is, therefore, our opinion that such warrants are taxable in the same manner as other personal property and should be assessed at their true value.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney-General.

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