

INHERITANCE TAX:

Whether or not a bequest to a hospital is exempt is a question of fact to be determined by reference to the corporate charter and purposes of the corporation.

2-4
January 28, 1936



Hon. F. C. Bollow
Prosecuting Attorney
Shelbyville, Missouri

Dear Sir:

This department is in receipt of your letter of January 21 requesting an opinion as to the following state of facts.

"A lady recently died in this county leaving her entire estate, consisting of about \$15,000.00, to Barnes Hospital of St. Louis. It is the contention of the Hospital that said fund is not subject to income tax and that the said hospital is a charitable institution. It is my contention that the estate is subject to a 5% income tax to be paid the State of Missouri. My understanding is that while Barnes Hospital does, of course, as all hospitals do, some charity work, it is not strictly a charitable institution, and charges fees for work wherever it is possible to receive them. I should very much appreciate your opinion on the matter, in that I am quite sure that on the strength of your opinion the matter here will be determined without the expense of further contest."

I.

In your request you use the words "income tax". Under no consideration could the bequest be subject to the income tax laws of the State of Missouri, as Section 10119,

Revised Statutes Missouri 1929, provides in part as follows:

"The following income shall be exempt
from the provisions of this article:

* * * * *

(3) The value of property acquired
by gift, bequest, devise or descent

* * * * *."

We assume, therefore, that the words "income tax" are the result of a typographical error, and that it is your contention that this bequest is subject to the Inheritance Tax Laws of the State of Missouri.

II.

(a) The principles of statutory construction.

At the outset of the discussion of the problem of inheritance taxation here presented it must be remembered that as a general rule it has long been held that statutes providing for exemptions should be strictly construed against the exemptions and in favor of the tax. In other words, exemptions are simply and purely an act of grace, and all reasonable doubt should be resolved in favor of the taxing power.

This principle is well stated by the Supreme Court of the United States in the case of Yazoo and Miss. V. Ry. Co. v. Adams, 180 U. S. 1, 21 Sup. Ct. Rep. 240:

"Exemptions from taxation are not favored by law, and will not be sustained unless it clearly appears to have been the intent of the legislature. Public policy in all the states has almost necessarily exempted from the scope of the taxing power large amounts of property used for religious, educational and municipal purposes; but this list ought not to be extended except

for very circumstantial reasons; and while, as we have held in many cases, legislatures may in the interest of the public contract for the exemption of other property, such contract should receive a strict interpretation, and every reasonable doubt be resolved in favor of the taxing power."

Consonant with the principles as heretofore outlined it stands beyond cavil that in order for legislation to relieve any species of property from its portion of taxation, such legislation should be so clear that there can be neither reasonable doubt nor controversy about its terms. *Riesterer v. Land Company*, 160 Mo. 141; *Beale on Cardinal Rules of Interpretation*, page 232;

- (b) The purposes for which the corporation is formed governs as to its exemptions from taxation.

Section 602, Revised Statutes Missouri 1929, provides as follows:

"When any property, benefit or income shall pass to or for the use of any hospital, religious, educational, Bible, missionary, scientific, benevolent or charitable purpose in this state, or to any trustee, association, or corporation, bishop, minister of any church, or religious denomination in this state, to be held and used and actually held and used exclusively for religious, educational, or charitable uses and purposes, whether such transfer be made directly or indirectly, the same shall not be subject to any tax, but this provision shall not apply to any corporation which has a right to make dividends or distribute profits or assets among its members."

In order to determine whether or not a bequest to

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this corporation is exempted under Section 602, supra, it is necessary to determine the status of the corporation and to ascertain the purposes for which it was incorporated. It must also be remembered that the exemption does not apply to any corporation which has a right to make dividends or distribute profits or assets among its members, or to those bequests not held and used exclusively for religious, educational or charitable uses or purposes.

CONCLUSION

In view of the foregoing, it is the opinion of this department that whether or not the bequest of fifteen thousand dollars (\$15,000.00) to Barnes Hospital of St. Louis is exempt from the Inheritance Tax Laws of Missouri, by reason of Section 602, Revised Statutes Missouri 1929, is a question of fact. It would be useless to cite cases involving this point for the reason that each case must, of necessity, turn on the language of the exemption statute and the provisions of the corporate charter or the purposes of the corporation (Gleason and Otis "Inheritance Taxation"). The principle is simple enough; the application to concrete facts alone is difficult.

Respectfully submitted,

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APPROVED:

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JWH:LC