

TAXATION: Taxes levied and assessed against land while under private ownership, and which is subsequently transferred to a state college, cannot be collected against said college while land is used and occupied for the purpose of the organization. The transferor does remain liable for such taxes, and his personal property may be levied on for the amount due.

September 5, 1947

Honorable Roy A. Jones  
Prosecuting Attorney  
Johnson County  
Warrensburg, Missouri



Dear Sir:

This is in reply to your letter dated August 9, 1947, wherein you requested an opinion of this office relative to a question on taxation. Said letter reads as follows:

"I would like to have your opinion on the following cases pertaining to taxation:

"Case No. 1.

"On June 28, 1943 Wm. B. Turnbow and Mary G. Turnbow, his wife, transferred by warranty deed certain real estate to the Board of Regents of Central Missouri State Teachers College, its successors and assigns. At that time there existed a tax lien against this property, in an amount unknown, occasioned by the assessments of June 1, 1942 and June 1, 1943. These assessments falling due on September 1, 1943 and September 1, 1944 respectively. Please rule as to what disposition should be made of the charge for these two last state years which are still shown delinquent on the tax record.

"Case No. 2.

"On May 20, 1946 George H. Richardson and Josephine Richardson, his wife, transferred by warranty deed certain real estate to the College Dormitory and Development Association, a non profit corporation, their successors and assigns. At that time there existed a tax lien against this property

in an amount unknown, occasioned by the assessment of January 1, 1946. Please rule as to what disposition should be made of the 1946 tax which is shown delinquent on the tax records."

Section 6, Article X of the 1945 Constitution provides as follows:

"All property, real and personal, of the state, counties and other political subdivisions, and non-profit cemeteries, shall be exempt from taxation; and all property, real and personal, not held for private or corporate profit and used exclusively for religious worship, for schools and colleges, for purposes purely charitable, or for agricultural and horticultural societies may be exempted from taxation by general law. All laws exempting from taxation property other than the property enumerated in this article, shall be void."

House Committee Substitute for House Bill No. 471, relating to taxation and revenue, was passed by the 63rd General Assembly, and is found in Missouri Laws of 1945, page 1799. Section 5 of said act provides that certain property is exempt from taxation, and reads as follows:

"The following subjects shall be exempt from taxation for state, county or local purposes: First, lands and other property belonging to this state; Second, lands and other property belonging to any city, county or other political subdivision in this state, including market houses, town halls and other public structures, with their furniture and equipments and on public squares and lots kept open for health, use or ornament; Third, lands or lots of ground granted by the United States or this state to any county, city or town, village or township, for the purpose of education, until disposed of to individuals by sale or

lease; Fourth, non-profit cemeteries; Fifth, the real estate and tangible personal property which is used exclusively for agricultural or horticultural societies heretofore organized, or which may be hereafter organized in this state; Sixth, all property, real and personal actually and regularly used exclusively for religious worship, for schools and colleges, or for purposes purely charitable, and not held for private or corporate profit shall be exempted from taxation for state, city, county, school, and local purposes; provided, however, that the exemption herein granted shall not include real property not actually used or occupied for the purpose of the organization but held or used as investment even though the income or rentals received therefrom be used wholly for religious, educational, or charitable purposes."

State ex rel. City of St. Louis v. Baumann, Collector of Revenue, 153 S.W. (2d) 31, involved a situation where the City of St. Louis was the highest bidder and received a certificate of purchase to a lot in the City of St. Louis which had been offered for sale because of taxes delinquent. After the redemption period had elapsed without the lot being redeemed, the city presented its certificate and demanded a deed from the Collector, who refused same because of the statutory provision which says that before a certificate holder may apply for a deed he must pay all taxes which accrued prior to and since the issuance of the certificate. The city contended that, since by the Constitution it is not subject to taxes, the statutory provision could not apply to it and it was entitled to the deed without first paying any taxes. The Supreme Court, In Banc, held at l.c. 35:

"It is our conclusion that the City is entitled to a deed to the land involved, and it is the duty of the collector to execute and deliver one, as the City is not required to pay the outstanding taxes. The same decision on a similar state of facts was reached in Lancaster County v. Trimble 34 Neb. 752, 52 N.W. 711."

At l.c. 34 the court said:

"Even though taxes have been levied and assessed against a tract of land while under private ownership, if it be afterwards acquired by a governmental agency such taxes may not be collected. *Bannon v. Burnes*, C.C.W.D.Mo., 39 F. 892. And see cases cited in the notes in 30 A.L.R. 413 and 2 A.L.R. 1535. Since the City is seeking to purchase the land in its public governmental capacity and not as a mere fiduciary, the land becomes immune from taxation as soon as the City becomes the owner of it and such immunity would extend to taxes previously assessed and levied."

This principle is further expressed in the annotation of 2 A.L.R., where it is stated at page 1536:

"This distinction is also clearly made in *Foster v. Duluth* (1913) 120 Minn. 484, 48 L.R.A. (N.S.) 707, 140 N.W. 129, in holding that property of the city could not be sold for taxes which were a lien upon the land at the time the city acquired it. The court said: 'After its purchase by the city in July, 1905, the property was devoted to public uses, and became public property. It was not thereafter subject to taxation. This is conceded by plaintiff. It is technically inaccurate to say that it was exempt from taxation, for the term "exemption" rather presupposes a liability removed by some constitutional or statutory provision. The property is "exempt," not because of any such provision declaring it exempt, but because of its character as public property devoted to a public use. The property of the state and of its political subdivisions, arms, or agencies, such as cities within its borders, when used exclusively for public purposes, is not subject to taxation, in the absence of constitutional or statutory provisions making public property subject to the tax laws of the state.\* \* \*'"

And at page 1538 it is stated:

"Under a statute providing that all lands exempted from taxation, including lands of any school district, shall not be affected by any sale made for taxes, etc., the sale of land acquired by a school district by condemnation is invalid, although the land was assessed and the tax for which it was sold was levied before title had been acquired by the district. Independent School Dist. v. Hewitt (1898) 105 Iowa, 663, 75 N. W. 497."

From the above, then, it may be concluded that land acquired by the state or its instrumentalities or a governmental agency would be immune from the payment of taxes as soon as such instrumentality becomes the owner; and such immunity would extend to taxes previously assessed and levied. In Gillian v. Adams, 180 Tenn. 74, the court said that education is a "governmental function." And, in School District No. 3 of Town of Adams v. Callahan, 237 Wis. 560, it is stated that the establishment of a system of public instruction in a state is a "governmental function." The reasoning employed in the cases above referred to, as relates to city owned property, would, we feel, be likewise applicable to the land in question; namely, that the property partakes of a public nature, used exclusively for public purposes, devoted to a public use. The taxation of public property owned by the state or its municipal divisions would mean that the state would be taxing itself in order to raise money to pay over to itself, and the collection of such taxes might result in destroying the public character of the property. It would thus logically follow that real estate acquired by a state college, which is used and occupied for the purpose of the organization, would be considered as having been acquired by a governmental agency so as to be controlled by the holding of the Baumann case, supra. Therefore, taxes levied and assessed against real estate while under private ownership cannot be collected after such real estate has been acquired by a state college, while being used and occupied for the purpose of the organization. The real estate becomes immune from taxation as soon as the college becomes the owner, and such immunity would extend to taxes previously assessed and levied.

The above is in answer to Case No. 1, which you presented in your letter of request. In answer to Case No. 2, on the facts presented, inasmuch as the College Dormitory and Development Association is a non-profit corporation operating solely for the

purpose of the state college, that is, housing some of the students, it is our opinion that the same reasoning employed in answer to Case No. 1 would be applicable to the instant case, if such application is not excluded by the proviso of Section 5 of House Bill No. 471, Missouri Laws of 1945, page 1799, which reads as follows:

"\* \* \* provided, however, that the exemption herein granted shall not include real property not actually used or occupied for the purpose of the organization but held or used as investment even though the income or rentals received therefrom be used wholly for religious, educational, or charitable purposes."

In an opinion rendered by this office August 6, 1942, to Mr. R. W. Starling, Member of the Board of Regents of Central Missouri State Teachers College, it was held that real estate conveyed to this College Dormitory and Development Association and used for the purpose of this Association was exempt from taxation. This holding is in line with the holding of the Illinois case cited in 157 A.L.R. 851, since the facts are quite analogous to the case at hand. There it is stated:

"The fact that property to which a nonprofit corporation, organized to promote the interests of a state university, holds the legal title in trust for the university, is leased by it to the university for a term of years at an annual rental which will suffice to discharge obligations incurred in the construction of buildings thereon, does not affect its exemption from taxation as property used for public educational purposes."

Therefore, subject to the qualifications contained in the above quoted proviso of 1945 Missouri Laws, page 1799, it may be concluded that the property in both Case No. 1 and Case No. 2 is exempt from taxation by virtue of the constitutional and statutory exemption hereinabove referred to. Since the property in question, as regards its character and public use by an instrumentality of the state, is quite analogous to property acquired by the city, as was involved in the Baumann case, supra, and the reasons for exempting such property from taxation are quite the same, we feel that the principle established in the Baumann case would likewise apply to the two cases presented herein, and that

such immunity from taxation would extend to taxes previously assessed and levied.

While it is true that a personal judgment may not be obtained in Missouri against a taxpayer for taxes against his land, Section 11086, R.S. Mo. 1939, provides in part as follows:

"The collector shall diligently endeavor and use all lawful means to collect all taxes which they are required to collect in their respective counties, and to that end they shall have the power to seize and sell the goods and chattels of the person liable for taxes, in the same manner as goods and chattels are or may be required to be seized and sold under execution issued on judgments at law, and no property whatever shall be exempt from seizure and sale for taxes due on lands or personal property: \* \* \*"

In commenting on this section, the court in *State ex rel. Hayes v. Snyder*, 139 Mo. 549, said at l.c.555:

"There are therefore two different methods provided by statute for the collection of taxes against real estate, viz., one by suit to enforce the State's lien against the land, the other to distrain personal property for 'all taxes.' In re Life Association of America, 12 Mo. App. 40, it was said: 'The right thus given to distrain personal property for "all taxes," as well before as after they have become delinquent, shows that all taxes are personal charges against the owner of the property in respect of which they are levied. It is true that a tax is not a mere debt in the sense that a common law action will lie for its recovery. It is an impost levied upon the citizen in invitum; and for coercing its payment the State is limited to the modes pointed out by statute.' Carondelet v. Picot, supra."

Since, then, in our particular case the lien may not be enforced against this exempt body, is there anyone else to whom the collector may look for the collection of the delinquent

taxes in question; namely, those taxes which were assessed to the owner prior to the transfer, and which still remain unpaid? In line with the theory that the taxes on land are a personal charge against the owner, Section 10940, R.S.Mo. 1939, reads as follows:

"Every person owning or holding property on the first day of June, including all such property purchased on that day, shall be liable for taxes thereon for the ensuing year."

Although Section 10940 was repealed by House Committee Substitute for House Bill No. 471 by the 63rd General Assembly, the provisions as to liability for taxes were the same, the date merely being changed from the first day of June to the first day of January. In 61 C.J., page 207, it is stated:

"\* \* \* But where property is required to be assessed as of a certain day in the year, and is then properly assessed to the person owning it on that day, he is not relieved from liability for such taxes by his subsequent transfer or conveyance of it to another, although made before the tax became payable, unless the statute makes some provision for apportionment of the tax between the buyer and seller.\* \* \*"

In *Atlantic & Pacific Railroad Co. v. Cleino*, 2 Dillon 175, the United States Circuit Court for the Eighth Circuit had before it a case where the vendee had acquired land which had outstanding against it taxes assessed against it while in the hands of the vendor prior to the transfer. The sheriff had attempted to seize certain personal property of the vendee for these taxes assessed against the vendor. The vendor sold the property by authority of an act of 1870. The court at 1.c. 181 said:

"\* \* \* Neither the act of 1870, nor any other act, authorizes a levy for back taxes on real estate, to be made on the personal property of any one, save the person who was the owner of the land at the time the assessment was made.\* \* \*"

CONCLUSION

It is, therefore, the opinion of this department that, on real estate transferred by warranty deed on June 28, 1943, to the Board of Regents of Central Missouri State Teachers College, its successors and assigns, a tax lien on such real estate occasioned by assessments of June 1, 1942, and June 1, 1943, is not enforceable against the present transferees. It is further the opinion of this department that, on real estate transferred on May 20, 1946, by warranty deed to the College Dormitory and Development Association, a non-profit corporation, their successors and assigns, a tax lien on such real estate occasioned by the assessment of January 1, 1946, is not enforceable against the present transferees.

It is also the opinion of this department that, because by statute the owner of property on tax day is made liable for taxes thereon, and because of Section 11086, R.S. Mo. 1939, supra, a levy may be made on the personal property of the transferor for taxes due which were assessed against the transferor prior to the transfer.

Respectfully submitted,

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APPROVED:

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