

TAXATION:
EXEMPTIONS:

Tillable land owned by a church and farmed by members thereof not exempt from taxation even though proceeds therefrom are used for paying operating costs of church.

January 11, 1950



Honorable Ted A. Bollinger
Prosecuting Attorney
Shelbyville, Missouri

Dear Mr. Bollinger:

This is in reply to your recent letter wherein you submitted the following statement request:

"An opinion is requested of your office as to whether real property owned by a church is exempt from tax when such land consists of 60 acres of tillable land which is farmed by the members of the church. The proceeds from this farm are then used to pay the salary of the preacher and for upkeep of the church building."

If the property is exempt from taxation, it must be under the provisions of Article X, Section 6 of the 1945 Constitution of Missouri, or Section 5, Laws of Missouri, 1945, p. 1800.

Article X, Section 6 of the Constitution reads as follows:

"All the 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."

Section 5, Laws of Missouri, 1945, p. 1800, reads in part as follows:

"The following subjects shall be exempt from taxation for state, county or local purposes:
* * * 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."

The particular words of Article X, Section 6 of the Constitution with which we are most concerned are: "* * * all property, real and personal, not held for private or corporate profit and used exclusively for religious worship may be exempted from taxation by general law."

For our purposes, the pertinent portion of Section 5, Laws of Missouri, 1945, supra, is as follows: "* * * all property, real and personal actually and regularly used exclusively for religious worship * * *, or for purposes purely charitable * * * shall be exempted from taxation * * *; provided, however, that the exemption herein granted shall not include real property * * * held or used as investment even though the income or rentals received therefrom be used wholly for religious * * * purposes." (Emphasis ours).

You state the land in question was used by members of the church for farming purposes; that the income realized from the operation of the farm is used to defray the expenses incurred in the operation of the church. In order to claim this exemption the statute requires the land be used regularly and exclusively for religious worship, however, if the land is held for the purpose of producing income, no matter to what purpose said income is applied, the tax exemption could not be claimed. It is obvious the land is used for producing income. While the entire income from the land is used for the worthy purposes of the organization its property is not so used exclusively for religious purposes, but a part thereof is used for purposes not incident to nor part of religion or charity. Therein lies a distinction expressed by the Supreme Court of Missouri in the case of Evangelical Lutheran Synod, etc. v. Hoehn, 196 S.W. (2d) 134, l.c. 143:

"The prerequisites to tax exemption were: (1) the use of the land itself, not merely its usufruct, for those exclusive purposes;"

Our Supreme Court in the case of Y.M.C.A. v. Baumann, 130 S.W. (2d) 499, l.c. 501 said:

"* * * the proof showed that a portion of the (Y.M.C.A.) Association's building was leased to others for commercial purposes. We denied exemption because the property itself was not used 'exclusively' for educational and religious purposes, and further held that it was immaterial that the income from the property was so used."
(Emphasis ours).

This office has on several occasions had some variation of this question before it for opinion and has uniformly held that if the property has been used to produce income, that it is no longer being used exclusively for religious worship or charitable purposes, even though the income derived therefrom is devoted to such purposes.

A tax exemption is allowed on real property used regularly and exclusively for religious worship or for purely charitable purposes. Land which is used for income producing purposes is not in regular use for the aforesaid purposes. Both, by court decision and by statute, the law of this state is that the devotion of the entire income, derived from the use of the land for farming, to religious or charitable purposes will not bring such property within the exemption statute.

We are fully cognizant, as everyone must be, of the unselfish work done by the membership of this church, and many other similar groups of spiritually dedicated men and women, and we believe that every encouragement should be given to their efforts; however, even as the land of others more materially minded is taxed within the law, as the law is written, so must this land be taxed according to the law.

CONCLUSION

It is the opinion of this Department that the real property owned by a church is not exempt from taxation when such land is farmed by the members of the church, notwithstanding that fact that the income derived from such use is devoted wholly to expenses incurred in the operation of the church.

Respectfully submitted,

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APPROVED:

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