

TAXATION

) Property owned by Veterans' organization exempt from taxation
) if used only for organization meetings, and not for social
) or other activities, and if organization is engaged in
) permanent, fixed projects of charitable nature.

February 10, 1950

2-11-50



Honorable William H. Wessel
Prosecuting Attorney
Gasconade County
Hermann, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"Is a Veteran's Organization, such as Veterans of Foreign Wars of The American Legion, exempt from paying taxes on an Organization owned Lodge Building, used only for purposes of holding meetings of the lodge which owns said building?"

Section 6, Article X, Constitution of Missouri, 1945, provides:

"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."

Section 5, Laws of Missouri, 1945, page 1799, provides in part:

"The following subjects shall be exempt from taxation for state, county or local

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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."

If the property of veterans' organizations is to be exempt from taxation, the only available exemption is that applicable to property actually and regularly used for purposes purely charitable and not held for private or corporate profit. We presume that the property in question is not held for private or corporate profit, otherwise, no question of exemption could arise. The question is, therefore, whether or not property owned by veterans' organizations, is actually and regularly used for purposes purely charitable.

We find no cases either in this state or in other states in which the question of exemption from taxation of property owned by veterans' organizations has been considered.

In the case of Salvation Army v. Hoehm, 354 Mo. 107, 188 S.W. (2d) 826, at l. c. 830, the meaning of "charity" for the purpose of exemption from taxation was set forth as follows:

"Probably the most comprehensive and carefully drawn definition of a charity that has ever been formulated is that it is a gift, to be applied consistently, with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the

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burdens of government. * * * A charity may restrict its admissions to a class of humanity, and still be public; it may be for the blind, the mute, those suffering under special diseases, for the aged, for infants, for women, for men, for different callings or trades by which humanity earns its bread, and as long as the classification is determined by some distinction which involuntarily affects or may affect any of the whole people, although only a small number may be directly benefited, it is public.' * * * "

In the case of *In Re Burroughs' Estate*, 206 S.W. (2d) 340, the question involved was whether or not a devise of property to a trustee, with directions to erect a building for Masonic purposes only, was exempt from inheritance tax under Sections 576 and 602, R. S. Missouri, 1939, which provide exemption for transfers of property to be actually used solely for charitable purposes. The court held the devise exempt from inheritance tax. The court in its opinion considered largely cases in which the liability of property owned by Masonic Orders to taxation was involved, and the decision of the court is, we feel, helpful in the present situation.

The court dismissed the facts presented as follows: (206 S.W. (2d), 1. c. 343)

" * * * This agreed statement of facts discloses that no activity of the Masonic Orders in Mexico has the slightest tinge of commercialism. The charter does not authorize those Masonic Orders to engage in any activity through which any individual would obtain any financial benefit or gain. The agreed statement of facts does show that the lodges at Mexico aid the parent or Grand Lodge in permanent, fixed and continuous projects of a charitable nature; for example, the Masonic Home of Missouri where indigent Masons, widows and orphans of Masons are provided with a home. Contributions to maintain this home are mandatory upon the subordinate lodges and chapters. Does the fact that the

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building to be erected by the trustee is to be used for holding lodge meetings and teaching Masonry and its principles, as indicated by the agreed statement of facts, defeat the exemption here claimed? * * *"

(Underscoring ours.)

The court answered its question as follows: (206 S.W. (2d), 1. c. 343)

"After careful consideration of this question and after reading many cases we conclude that the property devised to the trustee in this case, for the purpose of erecting a Masonic Temple to be used exclusively by the Masonic bodies of Mexico, Missouri, for Masonic purposes only must be exempt from the inheritance tax. * * *

"In *Fitterer v. Crawford*, 157 Mo. 51, loc. cit. 63, 57 S.W. 532, 535, 50 L.R.A. 191, this court said: 'Our conclusion is that Masonic lodges are organized for charitable and benevolent purposes, with no incentive to private or corporate gain, but whose revenues derived from whatever source they may be, are applied to the payment of their current expenses, and the relief of their afflicted and needy members and their families, and, although their charity is restricted to such use, they are charitable institutions.'

"Many cases from other states have held that the Masonic Lodge is a charitable institution and exempt from taxation if the property sought to be exempted is being used exclusively for Masonic purposes. * * *"

The court further stated at 206 S.W. (2d) 1, 1. c. 344:

" * * * In the case of *Ancient & Accepted Scottish Rite of Freemasonry v. Board of County Com'rs*, 122 Neb. 586, 241 N.W. 93, loc. cit. 97, 81 A. L. R. 1166,

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the Supreme Court of Nebraska had the following to say: 'And so, while it is a well-settled general rule that exemptions from taxation are to be strictly construed, and their operation is never to be extended by construction, the power and the right of the state to tax are always presumed, and the exemption must be clearly granted. This does not mean that there should not be a liberal construction of the language used in order to carry out the expressed intention of the fundamental lawmakers and the legislature, but, rather, that the property which is claimed to be exempt must come clearly within the provisions granting such exemption. 25 R.C.L. 1093, section 309.'

"We deem the above language appropriate to the situation before us. We are strengthened in our view by the wording of our constitution and statute above referred to wherein both read in substance that all property, real and personal, not held for private or corporate profit and used exclusively for charitable purposes may be exempt from taxation. We realize that financial profit for gain is not always the real test. In the case before us there is no suggestion of any commercialism. This court in the case of St. Louis Lodge, No. 9, B.P. O.E. v. Koeln, 262 Mo. 444, 171 S.W. 329, L.R.A. 1915C, 694, Ann. Cas. 1916E, 984, denied exemption from taxation on a building that was used by the Elks Lodge for lodge purposes. All of the profits of the lodge were given to charity but this court pointed out that no fee was charged for entrance to shows, dances, billiards or cards all of which were furnished in the building to members at the expense of the lodge. The court held the charitable purposes were secondary and incidental; that the main purpose of the lodge was to furnish social entertainment for its members. * * *"

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In view of the decision in the Burroughs' case, we feel that the property of a veterans' organization would be exempt from taxation only if used exclusively for activities of the organization and no other activities, social or otherwise, and furthermore, only if the organization is engaged in "permanent, fixed and continuous projects of a charitable nature." If, however, the profits of the organization are given to charity, but the organization furnishes activities to its members in the building, such as shows, dances, billiards or cards, at the expense of the organization, then, we feel that the holding in the case of St. Louis Lodge No. 9, B.P.O.E. v. Koeln, 262 Mo. 444, 171 S.W. 329, referred to in the quotation from the Burroughs' case, supra, would apply, and the property would not be exempt from taxation.

Thus, the question of exemption must depend upon the actual use to which the property is put and the activities of the organization. In your letter you state that the building is used only for the purpose of holding meetings of the organization which owns the building. If such is the exclusive use to which the building is put, we feel that one of the conditions of the Burroughs' case has been met. However, you give us no information concerning the charitable activities carried on by the organization. In order to be entitled to exemption, there must be a further showing that the organization is engaged in "permanent, fixed and continuous projects of a charitable nature." If the organization is engaged in such charitable activities, and the building is used exclusively for meetings and not used for social or other activities, then, we feel that the property is exempt from taxation. All of these factors must be present, however, for the exemption to apply.

CONCLUSION

Therefore, it is the opinion of this department that property of a veterans' organization is exempt from taxation only if it is used exclusively for purposes of the organization and not for social or other activities, and if the organization is engaged in "permanent, fixed and continuous projects of a charitable nature." The right to exemption must depend upon the facts of each particular case.

Respectfully submitted,

ROBERT R. WELBORN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

RRW/feh