TAXATION
EXEMPTIONS:

Church parsonage rented out to private individuals is not exempt from taxation under the provisions of Section 5, Laws of Missouri 1945, p. 1800.

December 17, 1949

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Honorable Clyde E. Combs,
Prosecuting Attorney,
Barton County,
Lamar, Missouri

Dear Mr. Combs:

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

"I would like the opinion of your office on the following question: - In the spring of 1937 the Trustees of the M.E. Church South purchased a residence property located on Lots 5 and 6 of Block 11, Wills' Fourth Addition to the City of Lamar, Missouri, subject to the uses and obligations imposed by the Church Discipline, and to be used as a parsonage for the pastor of the Mt. Carmel Circuit, composed of several churches in outlying communities here in the county. The property was used as a parsonage for several years until a pastor was appointed for the circuit who owned and resided in his own property here in Lamar. After his appointment he did not desire to leave his property and continued to live in the same.

"To my knowledge the property was rented in 1947 to lay renters and was assessed by the township assessor for 1947 and a Mr. Alvin Bentlage, a representative of the Mt. Carmel Board, paid the taxes on the property which the church now says was done without its knowledge. From January 1, 1948 to April 1, 1949 the property was rented to a local businessman for $30. a month and for the years 1948 and 1949 the assessor assessed the property at a $300 valuation, because the property was income pro-

ducing on January 1st of each of these years. It is my understanding that this property was rented until April or May of this year, at which time a new minister appointed to the circuit moved into the property and it is being used as a parsonage at the present time, and of course, if this use continues until January 1st the property will not be assessed for 1950.

"The Methodist authorities have appeared before the county court several times for an abatement of the 1948 and 1949 tax assessments, which they have not paid, and for a return of the 1947 tax which they say was paid through mistake.

"It is my opinion, under the above facts and in the light of Sec. 10942.4 Laws of 1945, this property does not fall under the exemption statute. I might add however, that the revenue of $30 per month derived from the property was used one-half to pay the circuit minister's salary, and the other one-half was kept in a fund and very recently used to repair and paint the parsonage in question.

"The church's theory is that this property never lost its exemption as a parsonage and that the temporary use as a rental property during this period did not remove the property from its exemption status. Under the stand taken by the church the county court has requested that I write your office and secure your opinion on this matter. The court feels that if the church is entitled to a rebate under the law, they will so act.

"Inasmuch as the church is contemplating legal proceedings in the matter I would appreciate your opinion as soon as possible."

If this property is exempt, it must be under the provisions of Art. X, Sec. 6 of the 1945 Constitution of Missouri, or Sec. 5, Laws of Missouri, 1945, p. 1800.

Art. X, Sec. 6 of the Constitution is 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."

Sec. 5, Laws of 1945, supra, is in part as follows:

"Property exempt from taxes.- 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."

Sec. 5 above encompasses the provisions of Sec. 10937 R.S. Mo. 1939, but in addition, adds the words beginning with "provided * * * * *". See above.

The particular words of Art. X, Sec. 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 Sec. 5, Laws of 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."

You state that the parsonage was rented out, that income

was thereby received and that said income was used wholly for church (religious) purposes. You further state that it was during the years 1947, 1948, and 1949 that the parsonage was rented out. The requirements of this statute as applied to a situation such as the one at hand are these: If the parsonage had been used regularly and exclusively for religious worship, it would be tax exempt, but if the parsonage had been held for the purpose of producing rental income, no matter to what purpose said income is applied, the tax exemptions could not be claimed. First then, has the parsonage been used regularly for religious worship? Quite obviously, it has not. For three consecutive years it has been rented out to "local businessmen" and other "lay renters". Regularly here means "steadily". The facts indicate that the parsonage has been used as income property for so extended a period of time that it could just as easily be said that its regular use was to produce income.

Secondly, the parsonage must have been used <u>exclusively</u> for religious worship or charitable purposes. (Underscoring ours.)

The case of State ex rel. v. Y.M.C.A.259 Mo. 233, discusses the purpose of the statute and its effect. The St. Louis Y.M.C.A. was a religious and educational association. In such capacity it owned certain real property located in the City of St. Louis, of which some fifteen per cent of the total area had been converted to income-producing rental property. The contention was made by the religious and educational organization that, in view of the fact that such income as was produced under the rental agreement was used exclusively for the purposes of the organization, its real property had not lost its exemption from taxation. A decree of the circuit court had upheld the right of the state and city to levy and collect general real estate taxes upon the real property in the circumstances outlined, and the Y.M.C.A. had appealed.

In affirming the decree of the circuit court and holding that the property was subject to taxation, the court said, l.c. 237:

> "Two of the cases cited by respondent (Taylor v. Lebeaume, 17 Mo. 338; and Fitterer v. Crawford, 157 Mo. 51) furnish very strong support for the decree of the circuit court. The ruling in the Fitterer case (157 Mo. 51) is a construction of our present Constitution and statute, and holds that a building owned by a Masonic lodge, on account of the charitable designs and practices of such lodge, is exempt from taxation, so long as it is used exclusively

> for such lodge purposes, but when two of the floors of such building are rented for commercial purposes then the entire building becomes subject to taxation. In deciding that case it was said: 'There is a very material difference between the "use of a building exclusively for purely charitable purposes," and renting it out, and then applying the proceeds arising therefrom to such purposes. To rent out a building is not to use it within the meaning of the statute, but in order to use it, it must be occupied or made use of. Moreover, by leasing the property the lodge becomes the competitor of all persons having property to rent for similar purposes, and the plain and obvious meaning of the statute is that such property shall not be exempt from taxation.' "

The last expression of the Supreme Court of Missouri is found in Evangelical Lutheran Synod, etc. v. Hoehn, 196 S.W. (2d) 134 Mo., l.c. 143:

> "The prerequisites to tax exemption were: (1) the use of the land itself, not merely its usufruct, for those exclusive purposes; (2) the owner must be dedicated to those purposes. To that extent the ownership characterized the use. If the first were not true, a proper religious or charitable institution could have claimed tax exemption if, for instance, its real estate was merely rented out and the rentals devoted to its objectives -- which is not the law. * * * * * "
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> (Emphasis ours.)

In speaking of the Y.M.C.A. opinion, supra, 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 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.
* * * * *

This office has on at least three occasions had some variation of this question before it for opinion and has uniformly held that if the parsonage is not being occupied by the minister, but has been used to produce income by renting it out, 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.

In an opinion dated May 4, 1943, addressed to Mr. Henderson, Prosecuting Attorney, Shelbina, Missouri, this office said: "If the minister lives in the building sought to be exempted from taxation, then it is exempt because it is being used for religious worship or for purposes purely charitable. However, if it is rented and used for a residence by persons other than the minister, then it * * * * is not exclusively used for religious worship or purposes purely charitable even though the rentals go for this purpose. "

The conclusion in the above opinion was that the church would have to pay taxes for that period of time during which the parsonage was rented out. All of the cases and opinions hereinbefore cited and set out were decided under the provisions of Sec. 10937 R.S. Mo. 1939, but as mentioned before that statute is substantially the same as the present one (Sec. 5, Laws of 1945, p. 1800) except for the addition in the new law of the expression beginning with "provided", which only serves to enact into law by statute what the courts of the state had already declared the law to be, namely - the purposesto which the income from the rented property is put are immaterial.

To sum up, then - a tax exemption is allowed on real property used regularly and exclusively for religious worship or for purely charitable purposes. A parsonage which has been rented out for private business purposes for three consecutive years is not in regular use for the aforesaid purposes. The decisions of the courts of this state and previous opinions of this office demonstrate the meaning of "exclusively" and the interpretation of the word "use". To rent out is not to "use" within the meaning of the statute and any use short of a total one is not exclusive. Further, both by court decision and now by statute, the law of this state is that the devotion of the entire income, derived from said renting out, to religious or charitable purposes will

not bring such property within the exemption statute.

In this state, property is assessed according to its ownership or control as of January 1 of each year. Laws of 1945, Section 17, Page 1782. Therefore the property in question should be taxed for the years 1947, 1948 and 1949. As you suggest, if the present use continues through January 1, 1950, the property would not be subject to tax for said year.

CONCLUSION

It is, therefore, the opinion of this office that a church parsonage which is being rented for the purpose of producing income, on the date it is assessed, is not exempt from taxation, and notwithstanding the fact that the income derived from such renting is devoted wholly to religious worship or charitable purposes.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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