TAXATION AND REVENUE: Liability for ad valorem tax on intangible personal property owned by religious educational and charitable institutions.

October 7, 1946

Honorable M. E. Morris
Director of Revenue
Jefferson City, Missouri

Dear Sir:

Reference is made to your inquiry of recent date, requesting an official opinion of this office, and reading as follows:

> "Enclosed herewith is a copy of letter from Ben A. Glassen, Chairman of the Legislative Committee of the Missouri Bankers Association. This letter inquires whether religious, educational and charitable institutions holding intangible personal property for non-profit use are subject to the new intangible tax. The position of this Department has been that they are not exempt.
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> "We will be very glad to have an official opinion from you as soon as convenient relative to the questions presented in the enclosed letter."

The letter received by you and referred to in your opinion request reads as follows:

> "After a review of House Committee Substitute for House Bill 868 and the 1945 Constitution we are wondering if religious, educational and charitable institutions holding intangible personal property for non-profit use are or are not subject to taxation. Section 6 of the 1945 Constitution is as follows:

"'Sec. 6. Exemptions from Taxation.-- 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.'

"Thus, real and personal property of the state, county and other political subdivisions and non-profit cemeteries are exempt from taxation by reason of Constitutional provision. Certain other specified groups holding personal property may be made exempt at the pleasure of the Legislature. The new Constitution prohibits exemption of groups by the Legislature except in these mentioned instances.

"House Committee Substitute for House Bill 868 under Section 1 (A) defines the groups eligible for taxation thereunder. That section follows: 'Section 1. (A) The term person includes any individual, firm, co-partnership, joint adventure, association, corporation, company, estate, trust, syndicate, executor, administrator, receiver or trustee appointed by the state or federal court, or any other group or combination acting as a unit, and the plural as well as the singular number.' It will be noted that in this section and also no where else in the bill is there any mention made of group exemption. Rather the last phrase of Section 1 (A) seems to include certain generally recognized charitable and religious groups holding property for non-profit purposes which have previously been exempt.

"The Constitution of 1875 Article X, Section 6 provides basic law for exemption of this

> type of property from taxation. Section 1 of the Schedule of the 1945 Constitution provides that the Constitution of 1875 is superseded by the Constitution of 1945 except that, under Section 2, laws in force at the time of the adoption of the new Constitution and in agreement therewith are to remain in full force and effect, those inconsistent expiring July 1, 1946. It would thus seem that if the Legislature had exempted the groups in question, from taxation, under the Constitution of 1875 that such exemption would still be valid, inasmuch as the Constitution of 1945 permits such an exemption, except for the fact that Section 1 (a) of House Committee Substitute for House Bill 868 seems to specifically include these groups.
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> "In this area there are many educational, social and religious groups owning intangible personal property wherein the property is not held for private or corporate profit. We are desirous of determining whether or not they are required to file a return under House Committee Substitute for House Bill 868.
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> "The contents of this letter is the outgrowth of a conversation between Mr. Haynes and myself during a visit at my office here this morning. We thought best to give you this in order that we may have your comment and suggestion in the matter."

Section 6 of Article X of the Constitution of Missouri of 1945 reads 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." (Emphasis ours.)

Pursuant to the constitutional authorization contained in the provision quoted, the 63rd General Assembly has enacted H.C.S.H.B. 471, which contains as a part of Section 5 thereof, the following:

> "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 matter under consideration being one involving the construction of a tax exemption statute, we deem it well to quote the following from Cooley on Taxation, Vol. 2 (4th Ed.), pp. 1403-1408, cited with approval in St. Louis Y. M. C. A. v. Gehner, 47 S. W. (2d) 776, 81 A. L. R. 1449:

> "'An intention on the part of the legislature to grant an exemption from the taxing power of the state will never be implied from language which will admit of any other reasonable construction. Such an intention must be expressed in clear and unmistakable terms, or must appear by necessary implication from the language used, for it is a well settled principle that, when a special privilege or exemption is claimed under a statute, charter or act of incorporation, it is to be construed strictly against the property owner and in favor of the public.

> This principle applies with peculiar force to a claim of exemption from taxation. Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and an alleged grant of exemption will be strictly construed and cannot be made out by inference or implication but must be beyond reasonable doubt. In other words, since taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it. Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the state has granted in express terms all it intended to grant at all, and that, unless the privilege is limited to the very terms of the statute the favor would be intended beyond what was meant.' Cooley Taxation, vol. 2 (4th Ed.) pp. 1403-1408."

Bound by this rule of strict construction of tax exemption statutes, we necessarily must consider the effect of the incorporation by the General Assembly in the statute under consideration of the phrase "actually and regularly used exclusively" for the designated purposes.

It will be noted at the outset that "ownership" of the property has not been adopted as the determining factor in deciding whether or not exemption shall exist. The exemption must rest upon the actual and regular exclusive "use" of the property for the purposes for which exemption is granted.

We are unable to find any Missouri appellate court decisions to guide us in the determination of the precise question. Under sections 6 and 7 of Article X of the Constitution of 1875, the General Assembly was authorized to exempt from taxation real property when used for similar purposes, but no authorization was granted for the exemption of personal property. There was, however, authority to exempt personal property used exclusively for agricultural or horticultural societies, and pursuant to this authority, Sections 5519 and 10938, R. S. Mo. 1939, were adopted. Neither of these sections, though, were ever construed by the appellate courts with respect to the exemption of personal property.

We do note that in Salvation Army v. Hoehn, 188 S. W. (2d) 826, the Supreme Court of Missouri incorporated the following construction of the phrase "exclusively used" which appears in the constitutional and statutory provisions under consideration in this opinion:

> "'The phrase "exclusively used" has reference to the primary and inherent use as over against a mere secondary and incidental use. People ex rel. v. Lawler, 74 App. Div. 553, 77 N.Y.S. (840), loc cit. 842, et seq. * * *"

That this is in accord with the rule as applied in other jurisdictions appears in Central Realty Co. v. Martin, 30 S. E. (2d) 720, l. c. 724, from which we quote:

> "Income from property is an incident of ownership, but cannot always be identified with the use of property. We do not mean that the exemption clause of the Constitution should be applied with the same rigor to all property. The physical use of land is a thing apart from the income derived therefrom. The uses of land being many and varied supply the numerous needs of humanity. * * * The correct rule is stated in the syllabus in the case of State v. Martin, supra: 'Under section 1, art. 10, Const., the exemption under taxation depends on its use. To warrant such exemption for a purpose there stated, the use must be primary and immediate, not secondary or remote.' * * * Where property constitutes part of the corpus of an educational and eleemosynary trust, subject to a lien held by a private person, the income from which is used solely to discharge a portion of the lien debt against the property, it is not exempt from taxation. * * *"

Also, to the same effect and further developing the distinction to be drawn between an exemption based upon "ownership" and one based upon "use," we cite the opinion in County Commissioners v. Colorado Seminary, 21 Pac. 490, from which we quote:

> "Thus, under the view of counsel for appellee, ownership becomes the test of exemption

> from taxation. But if the legislature had intended to establish this test, that body would doubtless have so declared; thereby simplifying the provision, and avoiding the present and like controversies. * * * The thought that ownership was intended to be the test is expressly negatived. The clause, 'while used exclusively for such purpose,' especially when coupled with the preceding expression, 'such property as may be necessary,' etc., denotes an intention to make something else besides ownership the criterion. * * * We are aware of no instance where use, and not ownership, was by constitution or statute made the test of exemption, in which it has been held that property situated like the land here in question was exempt from taxation. * * * "

While the quoted opinions relate to the use of real property, a similar conclusion has been reached by the Supreme Court of Illinois with respect to the use of intangible personal property. We quote from Smith et al. v. Board of Review, 136 N. E. 787, 34 A.L.R. 667:

> "It is further urged by counsel for the trustees that as the proceeds from the promissory notes and the shares of stock were all used for the support of the home, said notes and shares should be held exempt from taxation. This court has held that credits consisting of bonds and secured notes belonging to a school, the proceeds of which are used toward the support of the school, are not exempt from taxation; that the fact that the rents, revenues, and income of property are devoted to school purposes does not exempt the property itself from taxation; that the property itself must be used for school purposes before it is entitled to be held exempt. * * *"

This decision was reached under a constitutional provision which was interpreted by the same court, in the same case, in the following language:

> "* * * This court has held that the Constitution and laws of this state contemplate that only property actually and exclusively used for charitable purposes shall be exempt from taxation, * * *." (Emphasis ours.)

We believe that a similar result would be reached by the appellate courts of Missouri in construing the phrase "actually and regularly used exclusively," as used in H.C.S.H.B. 471 of the 63rd General Assembly.

CONCLUSION

In the premises, we are of the opinion that intangible personal property owned by religious, educational and charitable institutions is subject to the Missouri intangible personal property tax law.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

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