TAXATION: Real Estate purchased from proceeds of World War compensation etc., is taxable. Money looses government identity on being paid to guardian.

June 10, 1935.

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98

State Tax Commission
Jefferson City, Missouri

Attention of Mr. Andy W. Wilcox.

Dear Mr. Wilcox:

This will acknowledge receipt of your letter which asks this question:

> "Is real estate in Missouri purchased with money received by a war veteran for compensation from the United States Government, exempt from taxation."

Before getting to the heart of your question it may be appropriate to make some primary observations.

Many and varied efforts have been made under varying conditions by litigants to escape the assessment and payment of State taxes on their property.

In the case of VanBrocklin vs. Anderson, decided by the United States Supreme Court and reported in 117 U. S. 151, that Court speaking on the question of the right of a state to tax states as follows, l. c. 154:

> "In the words of Chief Justice Marshall: 'The United States is a government, and consequently a body politic and corporate, capable of attaining the objects for which it was created, by the means which are necessary for their attainment. This

great corporation was ordained and established by the American People, and endowed by them with great powers for important purposes. Its powers are unquestionably limited; but, while within those limits, it is a perfect government as any other, having all the faculties and properties belonging to a government, with a perfect right to use them freely, in order to accomplish the object of its institution.' U. S. v. Maurice, 2 Brock, 96, 109. The United States, for instance, as incident to the general right of sovereignty, have the capacity, within the sphere of their constitutional powers and through the instrumentality of the proper department, to enter into contracts and take bonds, not prohibited by law, and appropriate to the just exercise of those powers, although not expressly directed or authorized to do so by any legislative act; and likewise to take mortgages of real estate to secure the payment of debts due to them, notwithstanding Congress has enacted that 'no land shall be purchased on account of the United States, except under a law authorizing such purchase.' Act of May 1, 1820, chap. 52, Sec. 7, 3 stat. at p. 568; R. S. Sec. 3736; Neilson v. Lagow, 12 How. 98, 107, 108 (53 U. S. bk, 13 L. ed. 909, 913), and cases there cited. So the United States at the discretion of Congress, may acquire and hold real property in any State, whenever such property is needed for the use of the government in the execution of any of its powers, whether for arsenals, fortifications, light houses, custom houses, court houses, barracks or hospitals, or for any other of the many public purposes for which such property is used, and when the property cannot be acquired by voluntary arrangement with the owners, it may be taken against their will, by the United States, in the exercise of the power of eminent domain, upon making just compensation, with or without a concurrent Act of the State in which the land is situated. Harris v. Elliott, 10 Pet. 25 (35 U. S. bk. 9 L. ed. 333); Kohl v.

U. S. 91 U. S. 367 (Bk. 23, L. ed. 449); U. S. v. Fox, 94 U. S. 315, 320 (Bk. 24, L. ed. 192, 193); U. S. v. Jones, 109 U.S. 513 (Bk. 27 L. ed. 1015); U. S. v. Great Falls Mfg. Co. 112 U. S. 645 (Bk. 28 L. Ed. 846); Fort Leavenworth R. R. Co. vs. Lowe, 114 U. S. 525, 531, 532 (ante, 264, 266).

While the power of taxation is one of vital importance, retained by the States, not abridged by the grant of a similar power to the government of the Union, but to be concurrently exercised by the two governments, yet even this power of a State is subordinate to andmay be controlled by the Constitution of the United States. That Constitution and the laws made in pursuance thereof are supreme; they control the Constitutions and laws of the respective States and cannot be controlled by them. The people of a State give to their government a right of taxing themselves and their property at its discretion. But the means employed by the government of the Union are not given by the people of a particular State, but by the people of all the States; and, being given by all for the benefit of all, should be subjected to that government only which belongs to all. All subjects over which the sovereign power of a State extends are objects of taxation; but those over which it does not extend are, upon the soundest principles, exempt from taxation. The sovereignty of a State extends to everything which exists by its own authority, or is introduced by its permission; but does not extend to those means which are employed by Congress to carry into execution powers conferred on that body by the people of the United States. The attempt to use the taxing power of a State on the means employed by the government of the Union, in pursuance of the Constitution, is itself

an abuse, because it is the usurpation of a power which the people of a single State cannot give. The power to tax involves the power to destroy; the power to destroy may defeat and render useless the power to create; and there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over ~~thic~~ which exerts the control. The States have no power, by taxation or otherwise, to retard, impede, burden or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the General Government.* * * *"

And then continuing says, l. c. 158:

"Chief Justice Marshall, in delivering judgment, covered the whole ground by saying: 'If the States may tax one instrument, employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail, they may tax the mint; they may tax patent rights; they may tax the papers of the custom house; they may tax judicial process; they may tax all the means employed by the government, to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the States.

'Gentlemen say, they do not claim the right to extend state taxation to these objects. They limit their pretensions to property. But on what principle is this distinction made? Those who make it have furnished no reason for it, and the principle for which they contend denies it.' 4 Wheat 432 (608).

So in Weston v. City Council of Charleston, the exemption of the public lands, while owned by the United States, from state taxation was assumed, both in the argument of counsel that a state tax on stock issued by the United States

to individuals was equally valid with a tax on lands after they had been sold by the United States to private persons; and in the answer made by Chief Justice Marshall; 'The distinction is, we think, apparent. When lands are sold, no connection remains between the purchaser and the government. The lands purchased become a part of the mass of property in the country, with no exemption from common burthens.' 2 Pet. 459, 468 (27 U. S. Bk. 7 L. ed. 485, 488).

The United States do not and cannot hold property, as a monarch may, for private or personal purposes. All the property and revenues of the United States, must be held and applied, as all taxes, duties, imposts and excises must be laid and collected, 'to pay the debts and provide for the common defense and general welfare of the United States.' Constitution, art. 1, Sec. 8, Cl. 1. Dobbins v. Erie County Comrs. 16 Pet. 435, 448 (41 U. S. bk. 10 L. ed. 1022, 1027). The principal reason assigned in Buchanan vs. Alexander, 4 How. 20 (45 U. S. bk. 11, L. ed. 857) for holding that money in the hands of a purser, due to seamen in the navy for wages, could not be attached by their creditors in a state court was: 'The funds of the government are specifically appropriated to certain national objects; and if such appropriations may be diverted and defeated by state process or otherwise, the functions of the government may be suspended.'

The more thoroughly the proceedings by which the States became members of the Union--either by joining in establishing the Federal Constitution, or by admission under subsequent Acts of Congress are examined, the more strongly they confirm the same view.

In the Articles of Confederation of 1778, it had been expressly stipulated that 'No imposition, duties or restriction shall be laid by any State on the property of the United States.' And in the articles which the Ordinance of 1787 for the government of the Northwest Territory declared should 'be considered as articles of compact between the original States and the people and States in said Territory, and forever remain unalterable, unless by common consent,' it had been provided that 'no tax shall be imposed on lands the property of the United States.' Constitutions and Charters, 8, 432.

The Articles of Confederation ceased to exist upon the adoption of the Federal Constitution; and the Ordinance of 1787, like all Acts of Congress for the government of the Territories, had no force in any State after its admission into the Union under that Constitution. Permoli v. First Municipality of New Orleans, 3 How, 589, 610 (44 U.S. bk. 11, L. ed. 739). Strader vs. Graham, 10 How. 82 (51 U. S. bk. 13, l. ed. 337).

The Constitution, creating a more perfect union and increasing the powers of the National Government, expressly authorized the Congress of the United States 'to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States;' 'To exercise exclusive legislation over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock yards and other needful buildings;' and to 'dispose of and make needful rules and regulations respecting the territory or other property belonging to the United States;' and declared, 'This Constitution and the laws of the United States which shall be made in

> pursuance thereof shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.' No further provision was necessary to secure the lands or other property of the United States from taxation by the States."

In the case of Central Pacific Railroad Company vs. State of California, where the Plaintiff sought to escape the payment of a state tax, reported in 162 U. S. 91, that Court at page 118, speaks the following:

> "Even in respect of railway corporations created by act of Congress the claim of an exemption of their property from state taxation has been repeatedly denied. This was so ruled in Union P. R. Co. v. Peniston, 85 U. S. 18 Wall. 5, 30, 36 (21:787, 791, 793), and Mr. Justice Strong said:
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> 'It cannot be that a state tax which remotely affects the efficient exercise of a Federal power is for that reason alone inhibited by the Constitution. To hold that would be to deny to the states all power to tax persons or property. Every tax levied by a state withdraws from the reach of Federal taxation a portion of the property from which it is taken, and to that extent diminishes the subject upon which Federal taxes may be laid. The States are, and they must ever be, coexistent with the National government. Neither may destroy the other. Hence the Federal Constitution must receive a practical construction. Its limitations and its implied prohibitions must not be extended so far as to destroy the necessary powers of the states, or prevent their efficient exercise. . . . . .It is therefore manifest that exemption of Federal agencies from state taxation is dependent, not upon the nature of the agents or upon the mode of their constitution or upon the fact that they are agents, but upon the effect of the tax;* that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or does hinder the efficient exercise of their power.

A tax upon their property has no such necessary effect. It leaves them free to discharge the duties they have undertaken to perform. A tax upon their operations is a direct obstruction to the exercise of Federal powers. In this case the tax is laid upon the property of the railroad company precisely as was the tax complained of in Thomason v. Union P. R. Co. 76 U. S. Wall. 579, (19:792) It is not imposed upon the franchises or the right of the company to exist and perform the functions for which it was brought into being. Nor is it laid upon any act which the company has been authorized to do. It is not the transmission of despatches, nor the transportation of United States mails or troops or munitions of war that is taxed, but it is exclusively the real and personal property of the agent, taxed in common with all other property in the state, of a similar character. It is impossible to maintain that this is an interference with the exercise of any power belonging to the general government, and if it is not, it is prohibited by no constitutional implication.'

In Thomson v. Union P. R. Co. 76 U. S. 9 Wall. 579 (19:792), the Union Pacific Railway Company, eastern division, a corporation created by the legislature of Kansas, received government aid in bonds and land, and, thus aided, constructed its road to become one link in the transcontinental line known as the Union Pacific system, in accordance with the same acts of Congress relating to plaintiff in error, and conferring the same functions and privileges. The state of Kansas having subsdquently taxed the roadbed, rolling stock, and certain personal property of the corporation, its stockholders sought to enjoin the collection of the tax on the ground that the property was mortgaged to the United States and that it was bound under the congressional grant to perform certain duties and ultimately pay 5 per cent of its net earnings to the United States, and that state taxation would retard the burden to it in the discharge of its obligations to the general government.

But the contention was overruled, and Mr. Chief Justice Chase said: "'But we are not aware of any case in which the real estate or other property of a corporation not organized under an act of Congress has been held to be exempt, in the absence of express legislation to that effect, to just contribution, in common with other property, to the general expenditure for the common benefit, because of the employment of the corporation in the service of the government. It is true that some of the reasoning in the case of McCulloch vs. Maryland, 17 U. S. 4 Wheat 316 (4:579), seems to favor the broader doctrine. But the decision itself is limited to the case of the bank, as a corporation created by a law of the United States, and responsible, in the use of its franchises, to the government of the United States. And even in respect to corporations organized under the legislation of Congress, we have already held, at this term, that the implied limitation upon state taxation, derived from the express permission to tax shares in the national banking association, is to be so construed as not to embarrass the imposition or collection of state taxes to the extent of the permission fairly and liberally interpreted. . . . .We do not think ourselves warranted, therefore, in extending the exemption established by the case of McCulloch v. Maryland beyond its terms. We cannot apply it to the case of a corporation deriving its existence from state law, exercising its franchise under state law, and holding its property within state jurisdiction and under state protection. . . . .No one questions that the power to tax all property, business, and persons, within their respective limits, is original in the states and has never been surrendered. It cannot be so used, indeed, as to defeat or hinder the operations of the National government, but it will be safe to conclude, in general, in reference to persons and state corporations employed in government

> services, that when Congress has not interposed to protect their property from state taxation, such taxation is not obnoxious to that objection. Lane County v. Oregon, 74 U. S. 7 Wall. 77 (19:105); First Nat. Bank v. Kentucky, 76 U. S. 9 Wall. 353 (19;701)."

Likewise, in the case of Coe v. Errol, 116 U. S. 517, where the plaintiff sought to escape payment of taxes on personal property, the Court speaks as follows:

> "We have no difficulty in disposing of the last condition of the question, namely: the fact, if it be a fact, that the property was owned by persons residing in another State; for, if not exempt from taxation for other reasons, it cannot be exempt by reason of being owned by nonresidents of the State. We take it to be a point settled beyond all contradiction or question, that a State has jurisdiction of all persons and things within its territory which do not belong to some other jurisdiction, such as the representatives of foreign governments, with their houses and effects, and property belonging to or in the use of the Government of the United States. If the owner of personal property within a State resides in another State which taxes him for that property as part of his general estate attached to his person, this action of the latter State does not in the least affect the right of the State in which the property is situated to tax it also. It is hardly necessary to cite authorities on a point so elementary. The fact, therefore, that the owners of the logs in question were taxed for their value in Maine, as a part of their general stock in trade, if such fact were proved, could have no influence in the decision of the case and may be laid out of view.
>
> We recur, then, to a consideration of the question freed from this limitation: Are the products of a State, although intended for exportation to another State and partially prepared for that purpose by being deposited at a place or port of shipment within the State, liable to be taxed like other property within the State?

Do the owner's state of mind in relation to the goods, that is, his intent to export them, and his partial preparation to do so, exempt them from taxation? This is the precise question for solution.

This question does not present the predicament of goods in course of transportation through a state although detained for a time within the State by low water or other causes of delay, as was the case of the logs cut in the State of Maine, the tax on which was abated by the Supreme Court of New Hampshire. Such goods are already in the course of commercial transportation and are clearly under the protection of the Constitution. And so, we think, would the goods in question be when actually started in the course of transportation to another State, or delivered to a carrier for such transportation. There must be a point of time when they cease to be governed exclusively by the domestic law and begin to be governed and protected by the national law of commercial regulation, and that moment seems to us to be a legitimate one for this purpose, in which they commence their final movement for transportation from the State for their origin to that of their destination. When the products of the farm or the forest are collected and brought in from the surrounding country to a town or station serving as an entrepot for that particular region, whether on a river or a line of railroad, such products are not yet exports nor are they in process of exportation, nor is exportation begun until they are committed to the common carrier for transportation out of the State to the State of their destination or have started on their ultimate passage to that State. Until then it is reasonable to regard them as not only within the State of their origin, but as a part of the general mass of property of that State, subject to its jurisdiction and liable to taxation there, if not taxed by reason of their being intended for exportation, but taxed without any discrimination, in the usual way and manner in which such property is taxed in the State;* * *"

59 Corpus Juris at page 23, Paragraph 4, states:

> "* * *Insofar as jurisdiction means sovereignty, the jurisdiction is continued in the state within whose borders the tract is included, and for purposes of jurisdiction, used in the governmental, as distinguished from the juridical, sense, the tract forming the subject matter of the agreement remains under the control of the State within whose boundaries it lies."

In the case of Leary vs. Jersey City, 208 Fed. 854, the Court lays down the rule that the State within whose boundaries a tract of land lies rather than the State to whom exclusive and extra territorial jurisdiction under it is secured by an agreement, has jurisdiction for the governmental purposes of taxation.

It will be seen that the Federal Courts in construing the right of taxation have due regard for the sovereignty of the States as to matters of taxation for state purposes and do not rule that the sovereignty of the State for such purposes is limited in any way except insofar as the delegation of exclusive power of taxation has been granted not by one State but by the several states composing the National Union and acting in concert has been granted to the Federal Government.

Section 6 of Article X of the Constitution of the State of Missouri provides as follows:

> "The property, real and personal, of the State counties and other municipal corporations, and cemeteries, shall be exempt from taxation. Lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, may be exempted from taxation, when the same are used exclusively for religious worship, for schools, or for purposes purely charitable; also, such property, real or personal, as may be used exclusively for agricultural or horticultural societies: Provided, That such exemptions shall be only by general law.

Section 7 of Article X of the Constitution provides:

> "All laws exempting property from taxation, other than the property above enumerated, shall be void."

We do not understand your inquiry to be with reference to the properties named as exempt in Section 6 of the above Constitution of Missouri. It will be noticed that said Section does not of its own force exempt even the classifications therein enumerated, but requires that before any of those classes are exempt there must not only be a legislative enactment so providing but it further requires that such exemption shall be only by a general law. No property in Missouri is exempt from taxation except as defined by the above provisions and the herein referred to Federal Constitution and Statutes.

Section 3 of Article IV of the Constitution of the United States provides in part as follows:

> "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State."

Article VI of the Federal Constitution in part is as follows:

> "This Constitution and the Laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

By the World War Veterans Act is is provided, Vol. 38, No. 454, U.S.C.A:

> "The compensation, insurance, maintenance and support allowance* * *shall be exempt from taxation."

This provision of the World War Veterans Act has been ruled on in this State in the case of Butler vs. Cantley, 226 Mo. App. 1047, 47 S. W. (2d) 258. In that case the Springfield Court of Appeals on March 7, 1932, handed down an opinion in which they held that money whic h had been paid to the Administrator of an Estate of a deceased Soldier of the World War by virtue of the terms of the War Risk Insurance Act, and had been deposited by him thethe bank which later failed, was entitled to preference.

We conceive this ruling to be based on the only possible theory, that is, that the title to said money had not at that time been divested out of the Federal Government.

A like ruling as that made in the Springfield Court of Appeals case has also been made by the Courts of Connecticut, West Virginia, Nebraska and Iowa.

Decisions to the contrary have been handed down by the State Courts of Nebraska and Minnesota. See Note 3, Vol. 53, No. 11 (April 1, 1933) Supreme Court Reporter, p. 416.

The State Courts in construing a federal statute have the right to reach their own conclusion as to the construction of a federal statute where no federal cases in point are cited. This principle is announced in the case of Hayland Flour Mills Company vs. Missouri Pacific Railroad Company, 5 S. W. (2d) 125, Certiorari denied; Erie Railroad Company vs. Hayland Flour Mills Company, 48 S. Ct. 433, 277 U. S. 586, 72 L. Ed. 1001.

On account of the diverse and opposite rulings by the Courts of different states in construing this identical question the Supreme Court of the United States assumed jurisdiction of the question in the case of Spicer vs. Smith which is herein after referred to.

This of course being a federal statute the decisions of the federal Courts are controlling on State Courts in cases decided by the Federal Courts construing a Federal Statute. See case of Illinois State Trust Company vs. Missouri Pacific Railroad Company, 5 S. W. (2d) 368, Certiorari denied; 48 S. Ct. 25, 278 U. S. 623.

The determinative question is, when does money paid by the Government cease to be government money and assume the status of privately owned money, i. e. when does the title pass?

In the case of Pagel vs. Pagel as Administrator, decided March 5, 1934, by the Supreme Court of the United States, reported in Vol. 78, No. 9, page 627, United States Supreme Court Law Edition, Advanced Opinions, that Court held that war risk money paid to the estate of an insured soldier upon the death of the designated beneficiary before receiving all the installments, is not exempted from the claims of his creditors. At page 629 the Court says:

> "The purpose of the exemption, Par. 454, is to safeguard the insured soldier and the beneficiary payments made under the policy to them or for their benefit* * *Upon the death of the insured the father whom he had designated as beneficiary was by the Bureau awarded monthly payments to continue until death. The language of the statute limits the exemption to 'any person to whom an award is made'. It is clear that the statute does not extend the exemption upon the insured and beneficiary."

In the case of Spicer vs. Smith, 53 S.Ct. 415, the United States Supreme Court in defining when money paid by the Federal Government under the War Risk Insurance and Disability Compensation Act loses its identity as government money and takes on the status of privately owned money says, speaking of the contention of the guardian that the latter was entitled to a preferred claim for a bank deposit paid by the government to the guardian which he deposited in the bank:

> "He asserts that under acts of Congress later to be considered, the war risk insurance and disability compensation paid to a guardian of an incompetent veteran remains the money of the UnitedStates so long as it is subject to his control and suggests that the guardian is a mere instrumentality of the United States for the disbursement of such money for the benefit of the veteran."

In holding against this contention that Court said l. c. 416:

> "* * *Unquestionably payment to the guardian vested title in the ward and operated to discharge the obligation of the United States in respect to such installments* * *It results that the

> deposit in question does not belong to the United States and, as indebtedness to it, is essential to priority, the guardian's claim under that Section is without merit."

The Supreme Court of North Carolina in the case of Martin vs. Guilford County, reported in 158 S. E. 847, in construing this principle said:

> "In the instant case, the sum of money which was payable to plaintiff as a veteran of the World War, under the act of Congress, as compensation, insurance and maintenance and support allowance, has been paid to him, he has acquired full and unrestricted title to the money, free from any control over the same by the government of the United States; he has invested it, as he had a right to do, in the purchase of a lot of land and an automobile, which are subject to taxation by Guilford County, under the laws of this state. We think it clear that by the enactment of sections 454 and 618 of Title 38, U.S.C.A. Congress has not undertaken to exercise any control over the property, real or personal, now owned by the plaintiff, and that said property is not exempt from taxation by Guilford County, under the laws of this State, applicable to said property as well as to all other property in said county."

In the case of Duzan vs. Cantley, Commissioner of Finance, 55 S. W. (2d) p. 711, l. c. 712, our Kansas City Court of Appeals said, speaking of the same subject:

"It is argued that the money shall not be subject to the claims of creditors, and since there can be no assignment or garnishment or other proceeding against the beneficiary, therefore the relationship of debtor and creditor cannot exist, especially where the bank takes the fund with knowledge of the source thereof.

This contention is on the theory that the purpose and intent of the legislation in behalf of veterans is to protect the money from all claims, except the United States Government, not only until it comes into the hands of the beneficiary, but also until the latter has himself spent it. We think this is not the correct construction or interpretation to be placed thereon. In our view, funds thus arising are not thus protected after they have once come into the hands of the beneficiary. They have then become his absolute property, and having once come into his hands are no longer an object of solicitude or care on the part of the Government. The latter is careful to protect the fund until the beneficiary receives it, but no further. This seems to be clear from the use and subsequent reiteration of the word 'payable.' So long as a fund is 'payable' to a person it has not yet reached his hands, but when it has, it cannot longer be said to be payable to him. This is borne out by the plain intent of section 54, p. 81, of the above-mentioned USCA, where in protecting money due pensioners, attachment, levy, or seizure of such funds is prohibited, it speaks of money 'due, or to become due' to any pensioner, 'whether the same remains with the Pension Office, or any officer or agent thereof, or is in course of transmission to the pensioner.' It is not exempt after it is paid to the pensioner."

For a like expression of the Courts we also cite the case of State vs. Wright, 140 So. 584, by the Supreme Court of Alabama. State ex rel. Smith vs. Board of Commissioners, 294 Pac. 915, where the Court says, l. c. 921:

> "We conclude that the intervention of a guardian does not leave the pension funds still in the hands of the government so that they are still 'payable' or 'due' the ward as expressed by 38 USCA Sec. 454, so as to exempt them from assignment, execution, and taxes, but, when paid to the guardian, the title and possession have both passed from the government, and they are no longer 'payable', and consequently not entitled to any exemption from taxes under Section 454."

In the case of Trotter, Guardian, vs. State of Tennessee, United States Supreme Court Law Edition, Advanced Opinions, Vol. 78, No. 3, the Supreme Court of the United States had under consideration the question of exemption from taxation of compensation and war risk disability benefits to a mentally incompetent veteran, and the question as to the right of exemption of land purchased by the guardian of such incompetent, the same being paid for in cash out of the moneys theretofore received from the government in payment of compensation and war risk insurance.

The Court in holding there was no exemption from taxation states, l. c. 129:

> "Exemptions from taxation are not to be enlarged by implication if doubts are nicely balanced.* * *on the other hand, they are not to be read so grudgingly as to thwart the purpose of the lawmakers. The moneys payable to this soldier were unquestionably exempt till they came into his hands or the hands of his guardian.* * *we think it very

> clear that there was an end to the exemption when they lost the quality of moneys and were converted into land and buildings. The statute speaks of 'compensation, insurance, and maintenance and support allowance payable' to the veteran, and declares that these shall be exempt. We see no token of a purpose to extend a like immunity to permanent investments or the fruits of business enterprises. Veterans who choose to trade in land or in merchandise, in bonds or in shares of stock, must pay their tribute to the state." * * * *

The Courts have generally refused to enlarge on the statute on exemptions under consideration. They in holding that the guardian, of a minor, of funds that have been paid by the Government to the guardian of the ward, who has them on deposit in the bank, is not entitled to a preferred claim for the same, as was held in the Spicer case, supra, have gone much further in ruling that the Government identity or protection has ended, than is necessary to go in holding that the real estate purchased with money received by the War Veteran as compensation from the United States Government is subject to taxation.

The trend of the courts, and we think the holding, is to the view that when the Government money has actually been received, either by the party so entitled thereto or received by his guardian, that thereupon it loses its identity as public or government money and then has no other protection than that of the usual private individual. The title thereupon passes from the government.

CONCLUSION.

It is the opinion of this Department that real estate in the State of Missouri, purchased with money received by a war

veteran as compensation from the United States Government under the World War Veterans Act, i s not exempt from taxation.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General

APPROVED:

John W. Hoffman, Jr.,
Acting Attorney General.

DW:MM