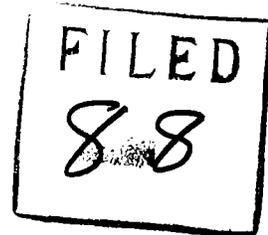


TAXATION: Non-profit cemeteries' income from money loaned is taxable.

May 10, 1946



Honorable Cecil T. Taylor  
House of Representatives  
Jefferson City, Missouri

Dear Mr. Taylor:

This Department is in receipt of your request for an official opinion, which reads as follows:

"I am enclosing a letter received from the treasurer of a cemetery association in my County.

"These people would like to know, at your earliest convenience, whether or not this money that they have in the treasury can be loaned on real estate and the yield be non-taxable under the new constitution and the intangible law recently passed and set up in House Bill 868. Of course this money will go back into the cemetery fund which, as they state, is a non-profit organization. I would appreciate it if you will mail this ruling directly to me."

Section 6, Article X of the Constitution of Missouri, 1945, provides, in part, as follows:

"All property, real and personal, of the state, counties and other political subdivisions, and non-profit cemeteries, shall be exempt from taxation; \* \* \*".

House Bill #471, passed by the 63rd General Assembly, and approved by the Governor, provides, in part,

as follows:

"The following subjects shall be exempt from taxation for state, county or local purposes: \* \* \*  
 \* \* \* \* \*  
 Fourth, non-profit cemeteries;  
 \* \* \*."

The identical question presented in your request was before the Supreme Court of Missouri in State ex rel. Mount Mora Cemetery Association vs. Casey, 210 Mo. 235. Under the facts in that case, taxes had been assessed "against the personal property of the association, amounting in value to at least \$120,000, as found by the assessor of the city of St. Joseph, which has been invested and used by the association as its capital, and not for cemetery purposes."

The court, through Judge Burgess, held:

"It is quite clear that, under section 6 of article 10 of the Constitution, and section 9 of relator's charter, all of the land held by it for cemetery purposes is exempt from taxation for general purposes, but does it necessarily follow that its personal property and moneys on hand acquired from the sale of lots are also exempt from taxation? As a rule, all property is subject to taxation, and, therefore, laws exempting property from taxation are to be strictly construed, and the right of exemption established beyond a reasonable doubt. (Fitterer v. Crawford, 157 Mo. 51). An exemption from taxation exists only where it is expressed in explicit terms, and it cannot be extended beyond the plain meaning of these limits. (State v. Wilson, 52 Md. 638.)

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"In Rosedale Cemetery Association v. Linden Township, 63 Atl. 904, it is held, under 'an act to authorize the incorporation of rural cemetery associations, and regulate cemeteries,' which provides that 'the cemetery lands and property of any association formed pursuant to this act or otherwise incorporated, as well as bonds and mortgages given to secure the purchase money of such cemetery lands, shall be exempt from all public taxes,' that the personal property of such cemetery associations, consisting of horses, hearses, carriages, agricultural implements, tools, and other articles used exclusively in and about their cemeteries and for burials in their cemeteries, are subject to taxation. The court said:

'The prosecutors insist that the word "property," as used in the eighth section supra, means personal property. All exemptions from general taxation are to be considered strictly; the resolution, in case of doubt, being in favor of the rule which subjects all property to a just share of the public burdens. \* \* \* \* \*

It is in accordance with the common wish of mankind that the places where the dead are buried should be protected and preserved against the interference of possible sales for unpaid taxes, or under execution for debts, and be kept free from all molestation or desecration. These legislative exemptions of cemetery property are the expression of that wish. But it is not perceived how that wish is made effectual by exemption from taxation property not used for burial places that has no associations connected with it, and may be disposed of by the association

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at any time, to any person for  
any purpose. \* \* \* \* \*

In view of the above case, and for the reasons  
advanced therein, it is believed that income from money  
loaned by a non-profit cemetery is taxable.

CONCLUSION.

It is, therefore, the opinion of this Depart-  
ment that income from money loaned by a non-profit  
cemetery is not exempt from taxation under Section 6,  
Article X of the Constitution of Missouri, 1945, and  
House Bill #471.

Respectfully submitted,

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APPROVED:

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