

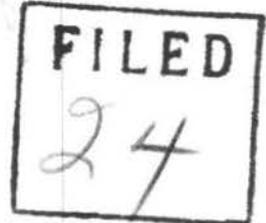
TAXATION:  
GOVERNMENT INSTRU-  
MENTALITIES:

Buildings, structures, furniture  
and equipment at Weldon Spring  
Ordnance Works are exempt from  
taxation.

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August 14, 1942

Honorable Forrest C. Donnell  
Governor of Missouri  
Jefferson City, Missouri



Dear Governor Donnell:

This is in reply to your request, of recent date, for an opinion in reference to the tax receipt, Form 11A, presented by St. Charles County to the State Board of Equalization, for taxes due on certain personal property which is the equipment owned by the United States Government in the Weldon Spring Ordnance Works, at Weldon Spring, Missouri. Your request specifically states:

"The State Board of Equalization hereby requests your official opinion on the question whether the property so eliminated is subject to taxation. In this connection your attention is respectfully directed to the fact that the exemption embraced in Section 10937 R. S. Mo. 1939, of furniture and equipments belonging to the United States apparently relates only to the furniture and equipments of 'public buildings and structures'. The question then arises as to whether or not the Ordnance Works comes within the category of 'public buildings and structures'."

In answering your request we are assuming that the land itself is owned by the United States Government, and was lawfully acquired by the Government through an act of Congress, or an administrative officer acting

under an act of Congress, for a public use. The fact that the property was obtained under authority of Congress, or by order of an administrative officer under an act of Congress, declares the property to be for a public use. It was so held in the case of *Barnidge v. United States*, 101 F. (2d) 295, by the Circuit Court of Appeals of the Eighth District, on an appeal from the District Court of the United States for the Eastern District of Missouri. In that case, the court said, at l. c. 298:

"It is urged that the purpose for which appellant's property is being taken is not a public purpose, for which land may be taken by eminent domain. If the Federal Government, under the Constitution, has power to embark upon the project for which the land is sought, then the use is a public one. Confessedly, the purpose can not be a private one. Primarily, the right to determine the purpose to be a public one is in Congress. It has been held that the taking of land for commemorative purposes is for a public use. *United States v. Gettysburg Electric R. Co.*, supra; *Roe v. Kansas*, 278 U. S. 191, 49 S. Ct. 160, 73 L. Ed. 259; *Old Dominion Land Co. v. United States*, 269 U. S. 55, 46 S. Ct. 39, 70 L. Ed. 162. In the last cited case, it is said (page 40): 'Congress has declared the purpose to be a public use, by implication if not by express words. \* \* \* Its decision is entitled to deference until it is shown to involve an impossibility.'"

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The general exemption law, as set out in the Constitution of Missouri, is Section 6, of Article X, but this Section does not apply to land owned by the United States Government.

The exemption from taxation of land owned by the United States Government is set out in Section 1 of Article XIV of the Constitution of Missouri, and reads as follows:

"The General Assembly of this State shall never interfere with the primary disposal of the soil by the United States, nor with any regulation which Congress may find necessary for securing the title in such soil to bona fide purchasers. No tax shall be imposed on lands the property of the United States; nor shall lands belonging to persons residing out of the limits of this State ever be taxed at a higher rate than the lands belonging to persons residing within the State."

Under Section 1 of Article XIV of the Constitution of Missouri the legislature saw fit to enact Section 10937 R. S. Missouri, 1939. That part of this section which you mentioned in your request, and of which you desire our construction, reads as follows:

"The following subjects are exempt from taxation: First, all persons belonging to the army of the United States; second, lands and lots, public buildings and structures with

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their furniture and equipments, belonging to the United States; \* \* ."

It will be specifically noticed that Section 1, of Article XIV, of the Constitution of Missouri, states:

" \* \* \* No tax shall be imposed on lands the property of the United States; \* \* \* \* \* ."

Recently the Supreme Court of this State had a question which was a converse of the facts set out in your request, which was the case of State ex rel Ferguson, Federal Housing Administrator v. Donnell, et al.. The question in that case was the authority of the State to tax the Administrator on the personal property used by him in the operation of Manhassatt Village, which had been taken over under foreclosure proceedings, by the Federal Housing Administration Act. The Federal Housing Act permits the states to tax the real estate acquired under that Act, but nothing was said about personal property. This case was before our Supreme Court in May, 1942, and the opinion has recently been handed down, holding that the personal property was taxable by reason of the fact that its ownership was incidental to the ownership of the real estate which was taxable. This case has not been finally adjudicated, for the reason that there is now pending in that case a motion for rehearing.

According to the opinion in the above case the same theory would be held by the court on the converse of the proposition, for the reason that since Section 1, of Article XIV of the Constitution of Missouri provides, "No tax shall be imposed on lands the property of the United States;" , then the personal property, or equipment would be incidental to that land and should also be exempt for taxation purposes.

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We are not passing upon the constitutionality of Section 10937, supra, but we find that if the legislature, after setting out in the second exemption of that Section, the words, "lands and lots," had deleted the words "public buildings and structures with their furniture and equipment", and then stated the words, "belonging to the United States", under the recent opinion in State ex rel Ferguson, Federal Housing Administrator v. Donnell, the structures, furniture and equipment would be incidental to the exemption granted lands and lots belonging to the United States, and would also be exempt.

The legislature, in enacting Section 10937, supra, provided for such situations as is now in the Weldon Spring Ordnance Works at Weldon Spring, Missouri. It provided in said section that, in addition to exempting lands and lots, they exempted "public buildings and structures with their furniture and equipment."

Of course, we are assuming, as said before, that the United States Government is owner of the fee of the land. But, if the United States Government is not the owner of the fee in the land, the personal property mentioned in your request would not be exempt from taxation. It was so held in Speed et al. v. St. Louis County Court, 42 Mo. 382, the court, in passing upon that question said:

"The appellants were seized and possessed of certain real estate in the city of St. Louis which the United States government took possession of in 1861 and continued to hold and occupy till 1865, when it was voluntarily relinquished and returned to its owners, the appellants. It is now claimed that it was illegal to levy and assess a tax on the property for the time the national government so held and occupied it.

The law exempts from taxation all lands and lots, public buildings and structures, with their furniture and equipments, belonging to the United States.

"But we cannot see upon what principle this exemption clause can have any application to the appellants' property, nor has any reason been suggested for giving it such force and direction. The property, to be exempt from taxation, must belong to the national government - - the title and ownership must be vested in it."

Section 10937, supra, specifically exempts "public buildings", which belong to the United States. "Public buildings" as used in this section, and as we believe intended by the legislature, does not mean buildings that are open to the public, at large, but means buildings owned by the United States Government and other Government instrumentalities.

In the case of *Maiatico Const. Co., Inc., v. United States*, 79 F. (2d) 418, which was a case in which a suit was brought against a contractor who had erected dormitory buildings at Howard University. The action was brought under the Heard Act, 40 U. S. C. A. 270, which Act provided that the bond of the contractor would be liable for material and work upon the dormitories. The court, in arriving at its opinion in the case, defined "public buildings" as follows:

" \* \* \* Attorney General Griggs in the early stages of the law, was of the opinion that the act had no

relation to contracts for the construction of movable articles and was confined to permanent structures like buildings upon land to which the United States had acquired complete title, etc. (23 Op. Attys. Gen. 174), but in *Title Guaranty & Trust Co. v. Crane Co.*, 219 U. S. 24, 31 S. Ct. 140, 142, 55 L. Ed. 72, it was held that a vessel being built for the United States, the title to which by the contract passed to the government as fast as paid for, was a public work within the provisions of the act. On the other hand, that without such contract provision, the vessel while in the course of construction was not a public work of the United States and was subject to the lien given by the state law to creditors furnishing labor and materials in the construction; the point of difference obviously centering on the question of title.

"But none of the questions decided by the Supreme Court in the Crane Case are particularly helpful in this, except that Mr. Justice Holmes, who wrote the opinion, defines 'public works,' as used in the Heard Act, in these words: 'If it (the work) belongs to the representative of the public, it is public.'

"Read literally, this definition would confine the provisions of the act to those contracts involving public works of which the ownership is in the federal government and this, we think, is the true test. In the title and in the body of the act the words used limit its pro-

visions to contracts for the construction of public buildings or the prosecution and completion of public works, and these terms, we think, mean buildings or works of the United States."

Under the above holding "public buildings" were considered to mean public buildings or public works which were buildings or works of the United States.

Section 10937, supra, further provided, "and structures with their furniture and equipments." The Weldon Spring Ordnance Works was built under an act of Congress, and is a public building or structure. The fact that Congress ordered it, made it public. (Barnidge v. United States, 101 F. (2d) 295).

In 50 C. J., Sec. 11, page 850, "public buildings" are defined, in a narrow way, as follows:

"In a narrow sense a 'public building' is a building erected and owned by state, county, or municipal authorities, a building owned or controlled and held by the public authorities for public use; a building belonging to, or used by, the public for the transaction of public or quasi-public business. As so defined the term 'public building' includes a high school building, a hospital, a jail, a town calaboose, or a common schoolhouse."

In the case of Brackett v. James Black Masonry & Contracting Co., 32 S. W. (2d) 288, the Supreme Court of this State in rendering an opinion in a damage suit for personal injuries, passed on the relationship of master and servant and defined "structure" as follows:

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"We think there is no doubt but that the construction of a reservoir was the erection of a building within the purview of the statute. The phrase, 'any kind of building,' is to be interpreted 'structure,' which is defined as that which is constructed, or the arrangement and union of parts in or the manner of construction or organization of a body or object, or construction. It is evident, we think, that the statute covers a structure."

Under the above definition a "structure" need not be a building, but could have been a reservoir.

Under the facts in your request the Weldon Spring Ordnance Works, which is situated on land owned by the United States, is either a public building or structure, and the furniture or equipment in said public buildings is exempt from taxation under Section 10937, supra.

#### CONCLUSION

It is, therefore, the opinion of this department that the personal property owned by the United States government in Weldon Spring Ordnance Works is not subject to taxation for ad valorem taxes by the State of Missouri or any of its agencies or subdivisions.

APPROVED:

Respectfully submitted

*Ray McKittrick*  
*Attorney-General*

W. J. BURKE  
Assistant Attorney General

WJB:RW