

LEASED PROPERTY:
LEASES:
PROPERTY ASSESSMENT:
PROPERTY TAX:
PROPERTY TAX EXEMPTION:
TAXATION:
EXEMPTIONS

Property leased by an individual or private business to the United States, the state, city, county or a political subdivision of the state, under a lease-purchase or rental-purchase agreement, for a consideration, is not owned by such governmental unit and is not exempt from taxation under Section 137.100, RSMo 1959, prior to the time the option to purchase is irrevocably exercised.

Property leased by an individual or private business for a consideration under a rental-purchase or lease-purchase agreement to an organization to be used for religious worship, for schools or colleges or for charitable purposes, is not exempt from taxation under Section 137.100, RSMo, prior to the exercise of the purchase option because the property is not being used exclusively for such purposes.

OPINION NO. 31
312 (1966)

June 8, 1967



Honorable Bill D. Burlison
Prosecuting Attorney
Cape Girardeau County
708 Broadway
Cape Girardeau, Missouri 63701

Dear Mr. Burlison:

This is in answer to your request for an opinion of this office which reads in part as follows:

"We have some cases in which individuals or private businesses are entering into rental-purchase or lease-purchase agreements with governmental, non-profit or public institutions, in which, after a given time, the real estate is conveyed at a nominal price to the public or charitable body.

"The County Court wishes to know whether, in such an arrangement, the individual or private business is entitled to a reduction or elimination of the tax assessment during the period of the rental-purchase or lease-purchase."

We assume that the rental-purchase or lease-purchase agreements to which you refer are agreements which give the lessee the option at sometime during the period of the lease to purchase the property and have the lease payments applied toward the purchase price.

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If the option is not exercised, the agreement would be treated as a lease only.

There are certain well established rules which must guide any determination of whether certain property is exempt from taxation. Generally, all property is liable to taxation unless specifically exempted. Taxation is the rule, exemption is the exception; and claims for exemption are not favored in the law. Bethesda General Hospital v. State Tax Commission, Mo.Sup., 396 S.W.2d 632; Midwest Bible and Missionary Institute v. Sestric, Mo.Sup., 260 S.W.2d 25. Exemption statutes must be strictly construed against the taxpayer and the burden is on the party claiming the exemption to establish clearly his right thereto. In re First National Safe Deposit Co., Mo. Banc, 173 S.W.2d 403; State ex rel St. Louis Y.M.C.A. v. Gehner, Mo.Sup., 11 S.W.2d 304. However such statutes also should be reasonably construed so as not to curtail the intended scope of the exemption. Bethesda Naval Hospital v. State Tax Commission, Mo.Sup., 381 S.W.2d 772; St. Louis Gospel Center v. Prose, Mo.Sup., 280 S.W.2d 827.

Constitutional exemption from taxation of certain property is granted by Article X, Section 6 and Article III, Section 43 of the Missouri Constitution.

Article X, Section 6 provides:

"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 added)

Article III, Section 43 provides in part:

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

Implementing the constitutional provisions of Section 6, Article X, is Section 137.100, RSMo, which provides:

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"The following subjects are exempt from taxation for state, county or local purposes:

- (1) Lands and other property belonging to this state;
- (2) Lands and other property belonging to any city, county or other political subdivision in this state, including market houses, town halls and other public structures, with their furniture and equipments, and on public squares and lots kept open for health, use or ornaments;
- (3) Nonprofit cemeteries;
- (4) The real estate and tangible personal property which is used exclusively for agricultural or horticultural societies organized in this state;
- (5) All property, real and personal actually and regularly used exclusively for religious worship, for school and colleges, or for purposes purely charitable and not held for private or corporate profit, except that the exemption herein granted does 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 is used wholly for religious, educational or charitable purposes."

The exemptions provided by both the Constitution and Section 137.100 are of two types. The first is "property of" or "belonging to" the state, county and other political subdivisions, and nonprofit cemeteries, or the "property of" the United States.

The statutory words "belonging to" have generally been construed by the courts as denoting ownership. *Plank v. Auditor General*, (Mich, 1916) 158 N.W. 856; *Evangelical Baptist Benes and Missionary Society v. Boston* (Mass. 1910) 90 N.E. 572; *People ex rel McCullough v. Bennett Medical College* (Ill. 1911) 94 N.E. 110. The other phrases used in the Constitution, "property of" also may be used

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synonymously with ownership. Such provisions may be contrasted with the provisions of Section 41.670 which exempts "all buildings leased by the state for military purposes."

Property leased to the United States, the state, county or other political subdivision in the state or a nonprofit cemetery does not "belong to" or is not the "property of" the lessee and, even though such property is used by the governmental unit for public purposes, it is not exempt from taxation under Section 137.100. Baldwin v. Board of Tax-Roll Collectors, (Okla. 1958) 331 P.2d 412; See United States v. Tax Commission of City of New York, 254 NYS 2d 785; and Texas v. Moody's Estate, C.C.A. Texas 1946, 159 P.2d 698.

The second "type" of exemption which is provided in paragraphs (4) and (5) of Section 137.100 is "all property, actually and regularly used exclusively for religious worship for schools and colleges, or for purposes purely charitable * * * " Under this type of exemption the use of the property rather than the ownership is the sole consideration determining its tax exempt status.

The question then arises (when privately owned property is leased to a religious or charitable institution or school or college and used by the lessee exclusively for religious, charitable or educational purposes) is the "use" of the property that of the owner who leases it for profit or is it that of the lessee who uses it for exemptive purposes. Although there is a diversity of authority on this question arising in part from differences in the exempting statutes and on the particular fact situation, see 57 A.L.R. 860, Missouri apparently has adopted the rule that the "use" of the property is that of the lessor when the property is leased for a profit.

In State v. Hammer v. Macgurn, 86 S.W. 138, 187 Mo. 238, an individual fee owner leased certain property to the board of president and directors of the St. Louis Public Schools at a rental of \$900. It was not disputed that the property was used for school purposes. The constitutional and statutory exemption was provided for "lots in incorporated cities * * * when the same are used exclusively for religious worship, for schools" etc. In holding that the property was not tax exempt, the Court said:

"* * * So that, after all, the real question in this case depends upon what is meant by the term 'used exclusively for religious worship, for schools, or for purposes purely charitable'. The ownership or title to the property is not the determining factor, for if the property is owned by a religious, charitable or school organization, and is leased or rented for use for any other purpose than such as the Consti-

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tution contemplates, the land is not exempt. So, if the private owner of the land allows his land to be used for such purposes, and charges no rent, and derives no personal benefit from the land, the land is exempt from taxation, because the land is then devoted exclusively to such a use. This was the case in City of Louisville v. Werne (Ky.) 80 S.W. 224, relied on by the defendants. For in such cases, the owner contributes the use of his land to public or quasi public use, or to such a use as the Constitution contemplates, and derives no gain or profit for himself, and therefore the state does not exact a tax from his land with one hand while accepting a contribution of the use of his land with the other hand. But, on the contrary, when the owner leases his land to the public for a public use, or to a quasi public body for a charitable or religious use, and applies the rents derived from the land to his own personal advantage, he contributes nothing to the public or to charity, he loses nothing by the use, he is not a benefactor to any one, but he stands before the law in exactly the same light as any one else who leases his land for any other purpose, and uses the rents for his own advantage, and therefore he is not entitled to any special consideration at the hands of the law or the government, and his property is not exempt. There would be just exactly as much, and no more or less, reason for holding that the property of one who sold provisions or supplies to a charitable institution, which were used to support the lives of the inmates thereof, was exempt from taxation. In both cases he would get and appropriate to his own use the proceeds or products of his property, just the same as if it had been rented, or sold to a private citizen, or to a business concern; and in neither instance would the state or the charitable institution be benefited one jot or tittle by the transaction, for it would pay a full consideration for all it got. * * *"

Although there are decisions to the contrary, the view expressed in the above case appears to be the more reasonable. If

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a private individual is leasing his property and receiving profits therefrom as rent it is only reasonable that this property should be subject to taxation. Certainly one who leases property to another for a non-exempt use for the same rental would be taxed.

Of course each tax exemption case is peculiarly one which must be decided on its own facts. *Midwest Bible and Missionary Institute v. Sestric*, supra. Your question is of a general nature and we have answered it accordingly. As the Court stated in the quoted portion of *State ex rel Hammer v. Macgurn*, supra, there may be circumstances in which property is leased that the foregoing reasoning does not apply and the property may be held to be tax exempt. But in our opinion, property leased by an individual or private business to a school or a religious or charitable organization for a rental fee is not used exclusively for schools or religious or charitable purposes and is not exempt from taxation under Section 137.100, RSMo 1959.

Nor do we believe that this holding is affected by the fact that the lease is coupled with an option to purchase prior to the time such option is irrevocably exercised. Even though the rental fee may ultimately become the purchase price, the property would not "belong to" the governmental body in the sense of being owned until the option is exercised. Nor would the rental fee become the purchase price prior to the exercise of the option.

Regarding these so-called lease-purchase or rental-purchase agreements, we enclose a copy of our opinion written on October 14, 1949, to Mr. Paxton P. Price, State Librarian in which we held that a County Library Board may not obtain a library building under a long term lease with an option to buy because of the provisions of Section 26(a) of Article VI, Constitution of Missouri, 1945, which provides in part:

"No county, city, incorporated town or village, school district or other political . . . subdivision of the state shall become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years, except as otherwise provided in this Constitution."

See also Section 28, Article IV of our Constitution limiting appropriations to confer authority to incur an obligation after the termination of the fiscal period to which it relates. We are not attempting to determine the legality of any particular agreement but enclose this opinion as expressing our view as to the legality of such agreements insofar as public purchases are made.

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You also ask as to whether the tax assessment should be reduced during the period of the rental-purchase or lease-purchase agreement. Since the owner is employing his property in a profitable manner, we can set no reason or basis for reducing the assessment.

CONCLUSION

It is the opinion of this office, that property leased by an individual or private business to the United States, the state, city, county or a political subdivision of the state, under a lease-purchase, or rental-purchase agreement, for a consideration, is not owned by such governmental unit and is not exempt from taxation under Section 137.100, RSMo 1959, prior to the time the option to purchase is irrevocably exercised.

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The foregoing opinion, which I hereby approve, was prepared by my Assistant, John H. Denman.

Yours very truly


NORMAN H. ANDERSON
Attorney General

Enclosure: Op. No. 71
10/14/49--Price