

Taxation — World War Veterans — Property of United States — Exemptions — Assessment.

Property in the hands of a guardian of incompetent veteran derived from funds received from the United States as compensation granted to the veteran and which was assessed for the year 1931 prior to the time chapter 98, laws of 1931, took effect is exempt from taxation for the year 1931, assum-

ing that this property is in fact the property of the United States as declared by chapter 98, laws of 1931.

Mr. Homer A. Hoover,
County Attorney,
Circle, Montana.

July 22, 1931.

My dear Mr. Hoover:

You inquire whether under and by virtue of section 1998, R. C. M., 1921, as amended by chapter 98, laws of 1931, property purchased with funds received from the United States as compensation granted to an incompetent World War veteran and in the possession of his legal guardian are exempt from taxation for the year 1931, or whether, owing to the fact that the act did not take effect until March 5, 1931, and the property was assessed on the first Monday in March (March second) the property could not be exempted for this year but could only be exempted for years following 1931.

Said chapter 98 amending said section 1998 specifies as one of the classes of property exempt from taxation,

“all property, real or personal in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity,
* * *”

The act further provides that the above mentioned property shall be exempt from all taxation “as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.”

Under the law, all property is subject to a lien for taxes which accrues as of the first Monday in March of each year. The property in question was in the possession of the legal guardian of the incompetent on that date, which was the second day of March of this year. The act did not take effect until the 5th day of March. If the property was in fact subject to taxation on the first Monday in March there would be a grave question as to whether the act could exempt it for the year 1931, owing to the provisions of section 39 of article 5 of the constitution of the State of Montana. However, if we assume, as we will, that the special provision above mentioned is constitutional and that the legislature was not prohibited from enacting it by section 2 of article 13 of the constitution, then, in my opinion, the question of the right of the legislature to exempt property from taxation after the lien for taxes attached on the first Monday in March is not pertinent to the solution of the question submitted by you for reasons which will hereinafter appear.

It will be noticed that the statute seeks to exempt such property upon the ground that while it is in the possession of the guardian of the incompetent it is to be considered as “property of the United States.” Of course, the legislature cannot by its enactments create a fictitious ownership so as to declare property which does not in fact belong to the United States to be its property for the purpose of creating an exemption

authorized by the constitution. On the other hand, if the property is owned by the United States it is exempt from taxation by the constitution and was exempted by section 1998 prior to the amendment by chapter 98, laws of 1931. If this property is in fact the property of the United States there was no need, in order to effect exemption, to specially provide for the class of property under consideration to be exempt as property of the United States has always been exempt from taxation under our constitution and our laws. If this property is in fact the property of the United States, the only effect of the special provision made in the amendatory law for its exemption is to specifically declare as a fact that this specie of property is included within the term "property of the United States" as used in the constitution and said section 1998, relating to exemptions. If it is not in fact property of the United States the legislative declaration that it is can avail nothing and the property would not be exempt as the constitution forbids exemptions except those authorized by it.

If the legislature has properly declared the fact that this specie of property is the property of the United States, as we will assume it has, instead of creating a fictitious ownership, then it is apparent that inasmuch as the guardian had the possession of the property in question on the first Monday in March it was on that date exempt from taxation under our constitution and laws as fully as it is exempted under the special provision mentioned in chapter 98, laws of 1931.

Being exempted on that date it would follow that no liability or lien ever attached to the property for the 1931 taxes on the first Monday in March of this year. The property was and is exempted from taxation without the aid of the special provision contained in said chapter 98. Therefore, the question would not arise as to cancelling any liability for taxes by reason of the special provision contained in said chapter 98 relating to the above mentioned property as no liability ever existed for the payment of any taxes on the first Monday in March of 1931.

Therefore, assuming that the property in the hands of the guardian is in fact property of the United States as the legislature has declared in chapter 98 aforesaid, it must follow that it was such from the time the guardian came into the possession of it which was prior to the enactment of said chapter 98 as ownership is a legal fact not subject to change by legislative declarations. The property in question would, therefore, be exempt from taxation for the year 1931, not because of the special provision contained in said chapter 98 exempting it, but because of the provision of our constitution and of the general provisions of section 1998 both before and after its amendment by said chapter exempting property of the United States from taxation.

As to what evidence must be submitted before the land may be exempted I will say that the law does not provide any specific procedure in this respect but that any evidence is sufficient which establishes the fact in the minds of the taxing authorities that the land is exempt for the reason specified in said special provision in said chapter 98. I think the method outlined in your letter would be sufficient.

Very truly yours,

L. A. FOOT,

Attorney General.