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Taxation - Tax Exemption of Property Devoted to Charitable Undertaking

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with the property in good faith and on the strength of the public records. This was the rationale of the famous case of *McDuffie v. Walker*¹⁴ where the court held that knowledge of the conveyance of immovable property on the part of a second vendee did not excuse the first vendee from making the recordation required by the Civil Code.¹⁵ This same doctrine has been held applicable to both mortgages¹⁶ and chattel mortgages.¹⁷

In 1943 the Louisiana State Law Institute had the problem under advisement. That body proposed the introduction of a Central Registration System for Louisiana.¹⁸ Due to objections by the bar and other interested parties, the proposal never reached the legislature. It was felt by those objecting that the Central Registration System would involve unnecessary delays. This difficulty can be readily remedied, however, by means of telephone and by use of modern equipment for transcribing conversation. Chattel mortgages could be deposited in the office of the clerk of court, who could telephone a summary to the Central Registration Bureau immediately, following up the call by mailing the mortgage itself. Any checks of title could be requested by telephone, and the mortgage certificate could be orally given by return call to the party requesting it. A permanent record of all conversations between the registration clerk and the other party could be made, dated and filed in the office of the clerk. This procedure would provide a means for running an immediate state-wide check, and the preservation of the recorded conversation would insure permanence of records. The conversation could be followed by a confirmation in writing for the attorney's files. The expenses of such a procedure would vary little from those of the present system. By taking advantage of such recent developments in science, the Central Registration System can offer an efficient, inexpensive and desirable solution to the problem of protecting all parties dealing with chattels.

CECIL C. CUTRER

TAXATION—TAX EXEMPTION OF PROPERTY DEVOTED TO CHARITABLE UNDERTAKING—The United Seamen's Service, Incorporated, a non-trading corporation organized under the laws of New York, brought a mandamus proceeding to cancel state and local property

14. 125 La. 152, 51 So. 100 (1910).

15. Art. 2266, La. Civil Code of 1870.

16. *Adams and Co. v. Daunis*, 29 La. Ann. 315 (1877).

17. *Krivos v. Simmons*, 16 La. App. 421, 134 So. 727 (1931). See also Elder, Recent Interpretation of the Chattel Mortgage Act (1932) 7 Tulane L. Rev. 128.

assessments on the Carol Hotel for the years 1944, 1945, and 1946, alleging that the property was exempt from taxation as a place devoted to a charitable undertaking.¹ By its certificate of incorporation and certificate of extension, relator corporation was organized to foster the welfare of seamen of the Merchant Marine. It owned furniture, equipment and a building in New Orleans known as the Carol Hotel, which it operated as a lodging and recreation place for merchant seamen. Seamen registering at the hotel paid a small fee for the purpose of making the enterprise as self-sustaining as possible. Those unable to pay signed an obligation to pay when possible, and lodging was furnished notwithstanding non-payment. A free recreational program was provided through volunteer workers. The hotel was operated at a deficit, made up by allocations from the United Community and War Chest of the City of New Orleans. Defendants' plea of prematurity as to the 1946 assessment was conceded by the relator.² Defendants' pleas of prescription were overruled and judgment rendered declaring the property exempt from taxation. On appeal to the supreme court *held*, (1) prescription statutes are not applicable to suits contesting an assessment of property exempt from taxation by the Constitution, and (2) the property here involved is devoted to charitable undertakings and is exempt under Article X, Section 4, of the Louisiana Constitution. Judgment affirmed. *State ex rel. United Seamen's Service, Incorporated v. City of New Orleans*, 209 La. 797, 25 So. (2d) 596 (1946).

Suits to test correctness of assessments "must be brought before January 1 of the year in which the assessment is to become effective; provided, that if for any reasons the rolls are not filed at least 30 days before January 1, such suits may be instituted within 30 days after the filing of the rolls."³ Since the instant case involved the legality of an assessment, this statute was held to be inapplicable. Prescription to a suit to test correctness of a

1. La. Const. of 1921, Art. X, § 4: "The following property, and no other, shall be exempt from taxation: . . . 2. places devoted to charitable undertakings, including that of such organizations as lodges and clubs organized for charitable and fraternal purposes and practicing the same; . . . but the exemption shall extend only to property, and grounds thereunto appurtenant, used for the above mentioned purposes, and not leased for profit or income."

2. La. Act 39 of 1922, § 2 [Dart's Stats. (1939) § 8363] provides that no suit to test correctness or legality of an assessment shall be instituted before the assessment rolls are filed in the office of the clerk of court. Here, relator's suit was filed before the assessment rolls for 1946 were filed in the office of the clerk of court, making the suit as to the 1946 taxes obviously premature.

3. La. Act 227 of 1936 [Dart's Stats. (1939) § 8346.6].

change in assessment is established by another statute.⁴ This act was also inapplicable in the instant case as applying to correctness of the assessment rather than to its legality. Third plea of prescription urged by the defendants was based on a statute⁵ which provides that a suit contesting legality as well as correctness of an assessment may be brought by a taxpayer within a prescribed time. This statute might have been deemed controlling, but it had been previously held that prescription statutes do not apply to suits wherein it is alleged that the property is exempt by the constitution.⁶ The court considered it beyond the power of the legislature to qualify such an exemption by establishing a prescription to assertion of the exemption.

The present Constitution confers exemption on *places devoted to charitable undertakings*.⁷ In an early case construing the functions of an institution which would make the exemption operative, it was broadly asserted: "An association 'to relieve the wants, comfort the suffering, and promote the happiness of their fellow-creatures,' is a charitable society, and exempt from taxation."⁸ Again it has been held that "charity" as used in tax exemption statutes is not restricted to the relief of the sick or indigent but extends to other forms of philanthropy or public beneficence such as practical enterprises for the good of humanity operated at moderate cost to the beneficiaries.⁹

Whether property is to be exempted from taxation as a place devoted to charitable undertakings necessarily depends on the facts and circumstances of each case. Thus a hospital and a Retreat for the Insane were held to be exempt as being charitable institutions because the property was used for relief of the fatherless, sick and poor.¹⁰ The primary objects of a Masonic lodge

4. La. Act 18 of 1934 (2 E.S.) [Dart's Stats. (1939) § 8324.8].

5. La. Act 39 of 1922 [Dart's Stats. (1939) § 8363].

6. *Taylor Brothers Iron Works v. New Orleans*, 44 La. Ann. 554, 11 So. 3 (1892); *Soniat v. Board of State Affairs*, 146 La. 450, 83 So. 760 (1919).

7. See note 1 *supra*. From 1864 to 1879, the exemption was accorded to property used for *charitable purposes*. (La. Const. of 1864, Art. 124; La. Const. of 1868, Art. 118.) From 1879 to 1921, the constitution exempted all *charitable institutions*. (La. Const. of 1879, Art. 207; La. Const. of 1898, Art. 230.)

8. *New Orleans v. Mechanics' Society*, 10 La. Ann. 282 (1855).

9. *State ex rel. Cunningham, Attorney General v. Board of Assessors of New Orleans*, 52 La. Ann. 223, 26 So. 872 (1898). The decision was based on La. Const. of 1879, Art. 207.

10. In the same case it was held that the property of Touro Infirmary was exempt as it set aside a large number of beds for the destitute sick, and provided food, medicine, and services of a physician for them. Likewise, the Christian Women's Exchange furnished meals to the indigent, received and sold for them articles made by the poor women, and provided rooms free of charge to necessary employees. It was held to be a charitable institution, and its property tax free.

have been found to be benevolence and universal charity, so that such of its property as was devoted to these objectives should be tax exempt.¹¹

On the other hand, the exemption was denied to the Young Men's Christian Association, notwithstanding the fact that its purpose is the improvement of spiritual and intellectual condition of the young men of the city.¹² It is not the nature or character of the owner that is determinative of the right to this exemption—rather it is the use to which the property is put.¹³ An abandonment of the charitable undertaking halts the exemption.¹⁴ But if the property is devoted to a charitable undertaking on tax day,¹⁵ it is exempt for the entire tax year, although used for non-charitable purposes for over eleven months.¹⁶ The Louisiana courts have held that exemptions from taxation are to be strictly construed against the person claiming the exemption, and any plausible doubt is fatal.¹⁷

It is apparently well settled that an institution does not lose its charitable character by requiring payment for benefits from those who are able to pay, where no benefits are denied to those

11. State ex rel. A. N. Bertel v. Board of Assessors, 34 La. Ann. 574 (1882), decided under La. Const. of 1879, Art. 207. The Attorney General of Louisiana has been called upon for opinions in several instances in the matter of property allegedly used for charitable purposes. He advised that the lodge hall and lot of a lodge of the Masons should be exempt, unless leased for profit or income [Opinions of Attorney General (1932-34) 889]; that property of the Milne Asylum for Destitute Orphan Boys should be exempt as a place devoted to a charitable undertaking [Opinions of Attorney General (1926-28) 327]; that property of the American Legion in Homer, Louisiana, was exempt because the income from said property was used for charitable purposes [Opinions of Attorney General (1924-26) 519]; that property of the Woodmen of the World should be exempt, unless leased for profit or income [Opinions of Attorney General (1930-32) 610]; that property of the Disabled American Veterans of the World War should be exempt as being property of a club organized for charitable purposes [Opinions of Attorney General (1932-34) 888].

12. See note 9, supra. A strict construction of La. Const. of 1879, Art. 207, prohibited finding that the purposes of the Y.M.C.A. were charitable. The Y.M.C.A. would probably be exempt now under the language added to the Constitution since this case. La. Const. of 1921, Art. X, § 4: "The following property, and no other, shall be exempt from taxation: . . . places devoted to charitable undertakings . . . , athletic or physical culture clubs, associations or organizations having and maintaining active memberships of not less than one thousand members. . . ."

13. State ex rel. Cunningham v. Board of Assessors of New Orleans, 52 La. Ann. 223, 26 So. 872 (1898). See also Beta Xi Chapter of Beta Theta Pi v. New Orleans, 18 La. App. 130 (1931); Opinions of Attorney General (1920-22) 796.

14. New Orleans Bank & Trust Co. v. New Orleans, 176 La. 946, 147 So. 42 (1933).

15. *Ibid.* Tax day in Louisiana is January 1.

16. *Ibid.*

17. *Mattingly v. Vial*, 193 La. 1, 190 So. 313 (1939).

unable to pay.¹⁸ An early Louisiana case had involved the problem, and it was decided that property used for charitable purposes was exempt from taxation even though the institution claiming the exemption took pay from those patients who could afford it.¹⁹ In deciding the instant case, the court also relied on a Pennsylvania decision on this point.²⁰

It would appear that a general test as to whether or not property is devoted to charitable undertakings might be formulated: (1) The undertaking must assume part of the burden of the state in relieving its sick, indigent, homeless, or underprivileged persons; (2) the property must be devoted principally to such undertaking; (3) the property must be devoted to a charitable undertaking on tax day; and (4) the property must not be leased for profit, although the fact that it produces some income which is devoted to making it as self-sustaining as possible does not disqualify it from being exempt.

It seems that this general test was properly applied in the principal case. The exemption herein discussed might, in the light of the principal case, be conceivably extended to other organizations which perform similar functions and which have heretofore been considered non-exempt.

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18. *School of Domestic Arts and Science v. Carr*, 322 Ill. 562, 153 N.E. 669 (1926).

19. *State ex rel. Cunningham v. Board of Assessors of New Orleans*, 52 La. Ann. 223, 26 So. 872 (1898).

20. *City of Philadelphia v. Women's Christian Association*, 125 Pa. 572, 17 Atl. 475 (1889).