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September 2, 1981

FILE NO. 81-029

TAXATION:
Cemetery Care Trust Funds
and Income Therefrom Exempt
From Illinois Income Tax

Honorable Roland W. Burris
Comptroller
State of Illinois
Springfield, Illinois 62706

Dear Mr. Burris:

I have your letter wherein you inquire whether cemetery care trust funds and the income therefrom are exempt from taxation under the Illinois Income Tax Act (Ill. Rev. Stat. 1979, ch. 120, par. 1-101 et seq.). Your question arises out of an apparent conflict between section 6 of the Cemetery Care Act (Ill. Rev. Stat. 1979, ch. 21, par. 64.6), which exempts cemetery care trust funds and income therefrom from taxation, and section 201(a) of the Income Tax Act (Ill. Rev. Stat. 1979, ch. 120, par. 2-201(a)), which imposes a tax upon the income of trusts. For the reasons hereinafter stated, it is my opinion that cemetery care trust funds and

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the income therefrom are exempt from Illinois income taxation.

Section 201(a) of the Income Tax Act (Ill. Rev. Stat. 1979, ch. 120, par. 2-201(a)) provides in pertinent part:

"Tax Imposed. (a) In general. A tax measured by net income is hereby imposed on every individual, corporation, trust and estate for each taxable year ending after July 31, 1969 on the privilege of earning or receiving income in or as a resident of this State. * * * "

The base income which is subject to Illinois income taxation is determined by the provisions of section 203 of the Act (Ill. Rev. Stat. 1979, ch. 120, par. 2-203). Section 205(a) of the Illinois Income Tax Act (Ill. Rev. Stat. 1979, ch. 120, par. 2-205(a)), however, provides in pertinent part:

"Exempt Organizations. (a) Charitable, etc. organizations. The base income of an organization which is exempt from the federal income tax by reason of Section 501(a) of the Internal Revenue Code shall not be determined under Section 203 of this Act, * * * ."

Subsection 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) exempts from Federal income taxation any of the types of organizations listed in subsection 501(c), which provides in pertinent part as follows:

"The following organizations are referred to in subsection (a):

* * *

(13) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for the purpose of the disposal of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incident to that purpose

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and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

* * *

The aforesaid provisions clearly exempt from taxation cemetery care funds of cemetery companies owned and operated exclusively for the benefit of their members, or which are not operated for profit. It is my opinion, however, that all cemetery care funds and the income therefrom are exempt from taxation under the Illinois Income Tax Act, even those cemetery care funds held by individuals or private organizations operating for profit.

The holding of cemetery care trust funds is authorized by section 3 of the Cemetery Care Act (Ill. Rev. Stat. 1979, ch. 21, par. 64.3). Section 6 of the Cemetery Care Act (Ill. Rev. Stat. 1979, ch. 21, par. 64.6), provides in pertinent part:

"The trust funds authorized by Section 3 of this Act, and the income therefrom, and any funds received under a contract to furnish care of a burial space for a definite number of years, shall be held for the general benefit of the lot owners and are exempt from taxation.
* * *

The Illinois Income Tax Act (Ill. Rev. Stat. 1979, ch. 120, par. 1-101 et seq.), which provides for the taxation of net income of trusts, was approved July 1, 1969, effective August 1, 1969, subsequent to January 1, 1948, which was the effective date of the Cemetery Care Act (Ill. Rev. Stat. 1979, ch. 21, par. 64.1 et seq.). The question that arises, therefore,

is whether section 201(a) of the Illinois Income Tax Act (Ill. Rev. Stat. 1979, ch. 120, par. 201(a)), which provides for the taxation of the net income of trusts, abrogates or impliedly repeals, to any extent, section 6 of the Cemetery Care Act (Ill. Rev. Stat. 1979, ch. 21, par. 64.6), which exempts cemetery care funds and the income therefrom from taxation. An implied repeal arises out of repugnancy between two statutes, and where they are repugnant the later statute abrogates the earlier statute to the extent that the statutes are inconsistent and irreconcilable with each other. (Rosehill Cemetery Company v. Lueder (1950), 406 Ill. 458, 465-467.) However, where two statutes treat of the same subject, the former being special and the later general, the latest in date will not be held to have repealed the former, and the special Act will prevail. Rosehill Cemetery Company v. Lueder (1950), 406 Ill. 458, 466-467.

Thus, under the aforesaid rule of statutory construction, if the later Act is general and the former is special, the special prevails in its application to the subject matter coming within its provisions unless the two Acts are irreconcilably inconsistent. The Cemetery Care Act (Ill. Rev. Stat. 1979, ch. 21, par. 64.1 et seq.) is a special statute authorizing and regulating cemetery care trust funds and section 6 thereof is a special provision which exempts cemetery care trust funds from taxation. The Illinois Income Tax Act (Ill. Rev. Stat. 1979, ch. 120, par. 1-101 et seq.) is a general statute and section 201(a) thereof (Ill. Rev. Stat. 1979, ch. 120, par. 2-201(a)) is a general provision which provides for the

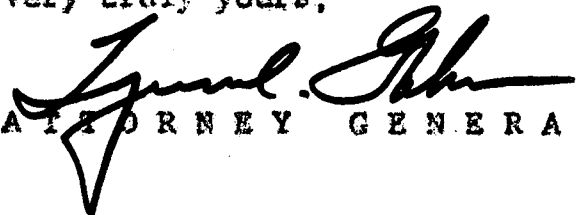
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taxation of income from trusts. These statutes are not irreconcilably inconsistent.

Based on the rule of construction set forth in Rosehill Cemetery Company v. Lueder (1950), 406 Ill. 458, 465-467, the special provision of section 6 of the Cemetery Care Act (Ill. Rev. Stat. 1979, ch. 21, par. 64.6) which exempts cemetery care funds and the income therefrom from taxation, would prevail over the general provision of section 201(a) of the Illinois Income Tax Act (Ill. Rev. Stat. 1979, ch. 129, par. 2-201(a)). See, also, City of Champaign v. Champaign Township (1959), 16 Ill. 2d 58, 67-68; Ptacek v. Coleman et al. (1936), 364 Ill. 618, 623; Sneeden v. City of Merion, Ill. et al. (7th Cir. 1933), 64 F. 2d 721, 728, aff'd 291 U.S. 262.

In conclusion, for the reasons stated above, I am of the opinion that cemetery care trust funds and the income therefrom are exempt from taxation under the Illinois Income Tax Act.

Very truly yours,


ATTORNEY GENERAL