

## Opinion No. 47-5012

April 18, 1947

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. Fred J. Federici, District Attorney, Raton, New Mexico

{\*34} In your letter of April 10, 1947, you request the opinion of this office on several questions with reference to Chapter 79, Laws of 1947, which extends the \$ 2,000 exemption to Veterans of World War II who became residents of this state prior to January 1, 1947.

Specifically, you present the following questions:

1. Whether the exemption allowed by Chapter 79, Laws of 1947, is applicable to 1947 taxes?
2. For the year **1947** is it necessary that both World War I and World War II Veterans establish the fact that they served **90** days?
3. For the year **1947** is it sufficient to allow the exemption to a World War II Veteran that he shows residence only prior to January 1, 1947, or is the exemption for 1947 limited only to Veterans of World War II who acquired residence prior to January 1, 1934?

### ARGUMENTS AND AUTHORITIES

Before the 1947 amendment, which is Chapter 79, Laws of 1947, the old law reference to property tax exemption for veterans read as follows:

#### **Section 76-111, N.M. Statutes, 1941 Compilation.**

"'Soldier' shall mean **every honorably discharged soldier, sailor, marine and army nurse** resident of New Mexico and {\*35} shall **include** every honorably discharged soldier, sailor, marine and army nurse, resident of New Mexico and who served in the armed forces of the United States for **ninety (90) days** at any time in which the United States was officially engaged in any war, **and shall include persons of either sex as such soldiers, sailors, and marines, and shall also include** resident unmarried widows of such soldiers, sailors and marines, **excepting World War I Veterans who became residents of the State after January 1, 1934, who did not serve in World War II.**"

Section 2, Chapter 79, Laws of 1947 (Amending Section 76-113, New Mexico Statutes, 1941 Compilation, supra.)

"Real and personal property of every soldier shall be exempt from taxation in the sum of two thousand dollars (\$ 2,000.00). **Said exemption shall apply to all taxes levied in the year of 1933, and all which may thereafter be levied**, but the said exemption shall not apply to any property held in trust by any soldier, except to the extent of the legal beneficial interest of such soldier therein. In addition to the said exception, said soldiers are hereby exempted from the payment of road taxes heretofore or hereafter levied." "Provided, however, that such exemption from taxation shall not be permitted to be claimed by nor allowed to any soldier who has not prior to January 1, **1947**, acquired residence in the State of New Mexico."

The 1947 amendment, (Chapter 79, Laws of 1947) carried the emergency clause and became effective when signed by the Governor on March 13, 1947.

The rule as stated in 61 C. J., page 406, Section 417, is as follows:

"For the purpose of determining whether or not property is **who served in the armed forces of the United States for thirty days (30) or more** at any time in which the United States was officially engaged in any war, including resident unmarried widows of such soldiers, sailors and marines."

Section 76-113 New Mexico Statutes, 1941 Compilation:

"Real and personal property of every soldier shall be exempt from taxation in the sum of two thousand dollars (\$ 2,000). Said exemption shall apply to all taxes levied in the year 1933 and all which may thereafter be levied, but the said exemption shall not apply to any property held in trust by any soldier, except to the extent of the legal beneficial interest of such soldier therein. In addition to said exemption said soldiers are hereby exempted from the payment of road taxes heretofore or hereafter levied. Provided, however, that such exemption from taxation shall not be permitted to be claimed by nor allowed to any soldier who has not, prior to January 1, 1934, acquired residence in the state of New Mexico."

In the case of *Flaska v. State, et al*, 177 P. 2d 174, the Supreme Court of New Mexico held that the soldiers tax exemption law, as above set out, allowed the exemption to Veterans of World War II, who served **30 days** or more, and who had acquired residence in New Mexico prior to **January 1, 1934**. (This case was based upon the law prior to the 1947 amendment.)

The Legislature in 1947 amended the above quoted exemption law to read as follows: (NOTE: The changes made by the 1947 Legislature are underlined).

Section 1, Chapter 79, Laws of 1947 -- (Amending Section 76-111, New Mexico Statutes, 1941 Compilation, supra,) provides as follow:

"'Soldier' defined. 'Soldier' {\*36} exempt from taxation for any year, its status in jurisdiction where all taxable property is required to be assessed at a particular date is

to be taken as of that date, so that **when a constitutional or statutory provision exempting property from taxation goes into** operation on a certain day in the year before the taxes for that year have been assessed, or **before the day when by law they become a fixed charge on the property, the exempted property is free from the taxes for the current year.**"

The rule as to prospective and retrospective operation of an exemption statute is stated as follows in 51 Am. Jur. p. 538, Section 537:

"The general rule of law that **unless a contrary intention is expressed**, statutes are treated as intended to operate prospectively, and not retrospectively, applies to statutes granting exemptions from taxation. Accordingly, a statute creating **an exemption**, in the absence of express provision otherwise, **will not affect taxes which are due and payable at the time when the law goes into effect.**"

Cooley on Taxation, at p. 1376, Section 654, states the rule as follows:

"If the exemption statute goes into effect before the tax day, the property exempted thereby cannot be taxed for the current year, but if the statute goes into effect after the tax day it does not exempt property for the current year."

For annotations see L. R. A. 1915 (c) 125; 6 Ann. Cases 438. See also State v. Academy of Science, 13 Mo. App. 213; State v. Dutton, 177 Miss. 391; 78 So. 146.

Besides the general statements of the law set out above, we have in New Mexico several statutes, and at least one Supreme Court decision, which bear directly upon this matter.

Sec. 76-114, 1941 Compilation, provides, in part, as follows:

"Any soldier entitled to said exemption whose name is omitted from said list may require his name to be inserted therein on presenting proof to the assessor that he is entitled to the exemption granted herein, and upon refusal of the assessor to insert his name in said list, such person may petition the district court without cost, and upon proper proof the court shall require the assessor to insert his name in the said list, **but such application to the assessor or a petition to the court must be made or filed prior to the delivery to the county treasurer of the tax roll for the year for which exemption is sought.**"

Sec. 76-305, 1941 Compilation, provides that the County Assessor shall extend upon the assessment roll the levies made by the Tax Commission and shall deliver to the County Treasurer said roll not later than the first day of November of each year.

If we consider Sec. 76-304, 1941 Compilation, it will be evident that the County Assessor must deliver the assessment roll to the County Treasurer sometime between the first Monday of September and the first day of November in each year.

I call your attention also to Sec. 65-401, 1941 Compilation, which provides that all taxes shall be **due and payable annually on November 1st.**

In the case of *Asplund v. Alarid, Assessor of Santa Fe County, et al*, reported in 29 N.M. 129, the Supreme Court of New Mexico had before it what appears to be an identical question to the one with which we are now confronted. In that case the Legislature, in 1923, passed an act providing for exemption from taxation and made the provision of the act retroactive so as to apply to taxes for 1922 and 1923. One contention offered by the {\*37} party attacking the statute as unconstitutional was that the statute attempted to extend the exemption of property taxes for 1922 and therefore violated Section 32, Art. 4 of the Constitution, in that it amounted to remitting and releasing a liability, since the 1922 taxes had already become due and payable.

The court held that the 1923 Act was valid, even though it applied to 1922 taxes:

"By the amendment of 1921, the Legislature was authorized to exempt from taxation the property of every honorably discharged soldier, etc., to the amount of \$ 2,000. To exempt from taxation is to free from the burden of enforced contribution to the expenses and maintenance of government, and therefore when the Legislature was authorized to exempt certain property from taxation, it was authorized to free that property from the contribution which it would otherwise be required to make, in common with other property, for governmental purposes. The burden of so contributing does not cease to be simply, because, by operation of law and time, it has become fixed and definite as to amount and maturity; so, even though at the time of the passage of the exemption law the taxes for 1922 had become an obligation or liability within the meaning of section 32 of article 4 of the Constitution, they were no less still a burden of enforced contribution to governmental expenses, of which the Legislature by constitutional amendment, was authorized to free the qualified property. The constitutional amendment under consideration does not limit the Legislature to freeing such property from contributions which might be assessed in the future, but gives the broad power of exempting the qualified property from taxation generally, and to that extent it must be held to have created an exception to the general rule announced in Sec. 32 of Art. 4. The words **"exempt from taxation" are not synonymous with the words "exempt from assessment"; the latter being much narrower in meaning than the former.** *Hotel Co. v. County Court*, 62 Mo. 134."

In the present instance the facts are much more favorable toward the exemption than were the facts in the case of *Asplund v. Alarid*, supra.

In the present instance the 1947 taxes are not "due and payable" until November 1, 1947, and by Sec. 76-114, 1941 Compilation, if the soldier owned the property on Jan. 1, 1947 he may make application for exemption at any time prior to the delivery to the county treasurer of the tax roll for the year 1947. Also, the exemption statute (Sec. 76-113, 1941 Comp., as amended by Ch. 79, Laws of 1947) provides that "The exemption shall apply to all taxes levied in the year 1933 **and all** which may thereafter be levied."

Based upon the Arguments and Authorities hereinabove presented, the answers to your questions are as follows:

**Question No. 1.** The 1947 amendment to the soldiers' property tax exemption statute (Ch. 79, Laws of 1947) is applicable to taxes for the year 1947.

**Question No. 2.** In order to claim an exemption for the year 1947, it is necessary that veterans of both World War I and World War II establish that they served in the armed forces ninety days.

**Question No. 3.** In order to claim an exemption for the year 1947, a veteran of World War I must show that he acquired residence in New Mexico prior to January 1, 1934; a veteran of World War II must show that he acquired residence in New Mexico prior to January 1, 1947.

By WM. R. FEDERICI,

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