

## Opinion No. 57-136

June 17, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Hilario Rubio, Assistant Attorney General

**TO:** Mr. Charles D. Alsup, Assistant District Attorney, Eighth Judicial District, Clayton, New Mexico

### QUESTIONS

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Is a soldier within the meaning of Section 72-1-11, N.M.S.A., 1953 Compilation, who is a life tenant of a real estate an "owner" within the meaning of Section 72-1-15, N.M.S.A., 1953 Compilation, and entitled to claim the soldier's exemption on his property?

#### CONCLUSION

Yes.

### OPINION

#### ANALYSIS

The pertinent part of Section 72-1-15, N.M.S.A., 1953 Compilation, provides that any soldier who shall be the owner of more than \$ 2,000 of property subject to taxation in this State, shall be entitled to designate the property in his tax return which shall be exempt under Sections 72-1-11, to 72-1-17, N.M.S.A., 1953 Compilation.

**Vol. 30. Words and Phrases** at pages 607 and 608, generally defines "owner as follows:

"The word 'owner', while not a technical term, but one of wide application in various connections, primarily means, with respect to land, a person who is seized of a freehold estate therein, one who owes no service to another which limits his domain."

"The word 'owner' as applied to land, is descriptive of various rights to and interests in land, As titles and rights to real property vary from the absolute and unqualified fee simple to that of the mere occupant, so the work 'own' and ownership' varies in its significance, according to context and subject-matter . . . The word 'owner,' as applied to real estate, may designate the owner of the fee or the owner of a less estate, as a lessee for a term of years, or any rightful proprietor, and its meaning is to be gathered from the connection in which it is used, and from the subject-matter to which it is applied

and when used in a statute, the obvious nature and purpose of the statute may indicate its meaning."

It is obvious that a life tenant of real estate is a life tenant who holds property and is therefore entitled to the soldier's exemption during his life.

I also find in 73 CJS., at page 213 the following:

"Assessment for taxation and payment of taxes. The ownership of property will be presumed to be in the person in whose name it is assessed for taxation, or, in the case of his death, in his heirs at law; and assessment books and tax receipts may be the basis of inference that the property was owned by the person in whose name it was assessed . . ."

In the case of **Brown vs. Murphy**, 97 P. 2d 281, the District Court of Appeals of Fourth District of California in denying a rehearing held that actual possession of land by a person is prima facie evidence of title in the possessor.

It is therefore our conclusion that a soldier who qualifies under Section 72-1-11, N.M.S.A., 1953 Compilation, who is a life tenant of real estate, is an owner within the meaning of Section 72-1-15, N.M.S.A., 1953 Compilation, and entitled to the \$ 2,000 soldier's exemption on taxation on his property in view of the authorities above cited.