

Opinion No. 64-114

September 3, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Frank Bachicha, Jr., Assistant Attorney General

TO: Honorable James C. Compton, District Attorney, Ninth Judicial District, County Court House, Portales, New Mexico

QUESTION

QUESTION

Upon the sale of real property by a veteran entitled to an exemption and designated by him upon the property sold, may the Assessor and/or Treasurer allow such exemption to be applied to the taxes assessed upon remaining property owned by such veteran?

CONCLUSION

Yes, but see analysis.

OPINION

ANALYSIS

At the outset it is well to point out that we are not here concerned with any of the requirements imposed by law in order to entitle the veteran to an exemption in the first instance. We are assuming in answering your question that such requirements have been met.

Section 72-1-13, N.M.S.A., 1953 Compilation grants the subject exemption in the following language:

"Real and personal property, including the community or joint property of husband and wife, of every soldier shall be exempt from taxation in the sum of two thousand dollars (\$ 2,000)."

Such exemption is said therein to be applicable to all taxes levied in the year of 1933 and all other which may thereafter be levied.

There is no uncertainty as to what procedure is to be followed, as respects the property sold, upon the sale or other disposition by a veteran of his tax-exempt property to a non-veteran. Such property simply ceases to be eligible for application of a veteran's exemption, as provided in Section 72-1-16 (B), N.M.S.A., 1953 Compilation, which reads as follows:

"72-1-16. Proof of soldier's ownership. -- B. In the event the veteran sells or otherwise disposes of his property either by the execution of a deed or a real estate contract or any other instrument of conveyance, he shall immediately notify the county assessor of the sale or other disposal of the tax exempt property. **On receipt of the notice, the county assessor shall immediately note the transfer on his assessment rolls and tax the property for the remaining portion of the year at its declared tax value without credit for the tax exemption.** However, if the sale or transfer is to another veteran who is entitled to the tax exemption, the assessor upon proper application and proof shall allow the exemption to be continued in force." (Emphasis added).

The procedure set forth above would require, in effect, the inclusion of the value of the sold property on the tax rolls at the date of sale, which would be analogous to the practice of including omitted property upon the assessment or tax rolls, as permitted by Section 72-2-42, N.M.S.A., 1953 Compilation. However a different question arises where there is sought to be deleted from the assessment or tax rolls the value of certain property. A deletion would be required if the veteran's exemption were allowed to be applied upon other property of the veteran for the remainder of the year from date of sale of the originally exempt property. There is no provision in the law which would allow deletions from the tax records after a certain "point in time" in the machinery employed for imposition and collection of taxes. This "point in time" is easily fixed by reference to certain pertinent statutes. Section 72-2-35, N.M.S.A., 1953 Compilation requires the county assessor to present to the Board of Equalization the original tax lists or schedules by the first Monday of April of each year. Upon presentation of these the Board of Equalization of each county within the state is required by Section 72-2-37, N.M.S.A., 1953 Compilation, to review and examine the schedules or lists delivered by the assessor. Then Section 72-2-39, N.M.S.A., 1953 Compilation imposes the following duties upon the Boards of Equalization:

"72-2-39. Record of action of board of equalization -- Return of schedules -- Date. -- **The board shall endorse upon all schedules or lists its action thereon, and shall upon closing its meetings, and not later than May 15, return the schedules or lists to the assessor.** The board shall also, upon closing its meetings, and not later than May 15, cause a summary to be prepared in duplicate of all instances in which the board has decreased or increased the assessed valuation of property placed thereon by the assessor. The summary shall contain the name of the affected taxpayer, the city or school district in which the property is located, the type of property, the assessor's valuation and the revised valuation placed thereon by the board. The original of such summary shall be certified as correct by the county clerk and shall be promptly delivered to the state tax commission at the close of the board's meetings." (Emphasis added).

May 15 of the year appears to be the crucial date. This is the date upon which the finalization of the tax schedules, and the preparation of the tax rolls are based.

Any changes which would be effected upon these tax records subsequent to May 15, affecting the status of the property included therein, would cause undue confusion and

place a great burden upon those public servants charged with the duty of assessment and collection of ad valorem taxes. Further and most important, there is no legal authorization for such alterations.

For the reasons expressed above, it is our opinion that the answer to your question, although in the affirmative, must be qualified to the extent that no exemption may be allowed to be diverted from the property upon which it was originally claimed, for use upon other property of the veteran, upon sale of the former, if such diversion is sought to be effected after May 15. Further, it must be understood that where the veteran has had the advantage of the exemption for a part of the year upon the property disposed of, he would not be entitled to the application of the exemption upon any other property. This is for the simple reason that the mechanics of taxation would not permit a pro-rata application (time-wise) of such exemption. Where, however, the veteran will agree to take no exemption upon the originally tax-exempt property, the transfer of such exemption in its entirety, to be applied upon other property owned by him since January 1 ("tax day" in New Mexico), would be proper, so long as all of this takes place prior to May 15 of the tax year.