

## Opinion No. 64-125

September 25, 1964

**BY:** OPINION OF EARL E. HARTLEY, Attorney General James V. Noble, Assistant Attorney General

**TO:** Jesse Kornegay, Chief Tax Commissioner, State Tax Commission, Santa Fe, New Mexico

### QUESTION

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May a widow of a deceased veteran who is also a veteran receive a double property tax exemption?

#### CONCLUSION

Yes.

### OPINION

#### ANALYSIS

It is assumed at the outset that all legal requirements have been complied with by the widow so as to qualify her, as a veteran, for the tax exemption and also to qualify her as a veteran's widow for the tax exemption as a widow. The sole question in such case is whether the fact that she herself is a veteran and is also the widow of a veteran would deny to her either of the tax exemptions for which she would otherwise be entitled?

Our Constitution contains a provision granting authority to the legislature to grant tax exemptions to qualified veterans or widows of veterans. Article VIII, Section V of our Constitution reads as follows:

"Head of family and veteran exemptions. -- The legislature may exempt from taxation property of each head of the family to the amount of two hundred dollars (\$ 200) **and** the property, including the community or joint property of husband and wife, of every honorably discharged member of the armed forces of the United States who served in such armed forces during any period in which they were or are engaged in armed conflict under orders of the President of the United States, **and** the widow of every such honorably discharged member of the armed forces of the United States, in the sum of two-thousand dollars (\$ 2,000). Provided, that in every case where exemption is claimed on the ground of the claimants having served with the armed forces of the United States as aforesaid, the burden of proving actual and bona fide ownership of such property upon which exemption is claimed, shall be upon the claimant. (As

amended November 3, 1914, September 20, 1921, September 20, 1949 and September 15, 1953)."

(Emphasis added).

Our legislature did see fit to grant the authorized exemptions. Section 72-1-11, N.M.S.A., 1953 Compilation, defines a soldier as including resident unmarried widows of persons qualified for the exemption. Section 72-1-13, N.M.S.A., 1953 Compilation provides that where a husband and wife are each qualified to receive a soldier's exemption each may claim it and fixes a soldier's exemption in the sum of \$ 2,000.00.

The case of **Asplund v. Alarid**, 29 N.M. 129, 219 P. 786, involved an interpretation of the constitutional provision and statute granting a soldiers and head of household exemption. It was contended that a person could not claim both exemptions. Our Supreme Court in that case held that one person, who otherwise qualified, was entitled to both exemptions. The language construed by our court in that case, being the veteran's exemption and head of household exemption, is strikingly similar to that now being construed. In that case the language being construed was our present constitutional provision. Article VIII, Section 5, of our constitution, *supra*. (Any amendments do not effect the portion being construed). The provision authorizes an exemption for each head of a family and property of certain veterans **and** the widows of such veterans. In construing the provisions as not being mutually exclusive the court said:

"We believe the contention of Appellant that the amendment does not authorize the granting of an exemption of \$ 200 in addition to the \$ 2,000.00 exemption, to a soldier who is also the head of a family, to be disposed of by even a casual reading of the amendment itself. (The amendment being one providing the present pertinent language of the constitutional provision). The language seems to be so plain as to require no construction. If a taxpayer be the head of a family, the legislature is authorized to set aside his property to the extent of \$ 200 as exempt from taxation; if he be a soldier, property to the value of \$ 2,000 may be exempted; **if he be both, he may be granted both exemptions.**" (Material in parenthesis supplied.) (Emphasis Added).

A fair construction of the language of the provision as the same applies to veterans exemptions and to widows of deceased veterans, particularly in light of the above decision compels the answer that the legislature is authorized to grant an exemption on property to the value of \$ 2,000 to one who qualifies as a veteran and \$ 2,000 to one who qualifies as a widow of a veteran and both exemptions to one who qualifies as both.

We must turn then to the language of the legislative enactments concerning the granting of the authorized exemptions. It should be noted in this connection that the legislature in granting the head of household exemption provided that only one head of household exemption could be granted to a single family (Section 72-1-4, N.M.S.A., 1953 Compilation). This provision was inserted as an amendment shortly after the decision of

**Asplund v. Alarid**, supra. No such prohibition appears in the language of the sections providing for an exemption for veterans and their widow. In fact the law specifically provides that where both husband and wife are veterans, both may claim an exemption (Section 72-1-13, N.M.S.A., 1953 Compilation).

Section 72-1-15, N.M.S.A., 1953 Compilation provides that a soldier may claim a \$ 2,000 exemption for his personal property. Section 72-1-11 defines the term soldier as every honorably discharged member, **of either sex**, of the armed forces of the United States who meet certain specified service requirements not here involved. The section further provided as follows:

"Provided that such honorably discharged members of the armed forces shall also include resident unmarried widows of such resident honorably discharged members of the armed forces. . ."

There is no provision in our law relating to such exemption which either specifically grants or denies the privilege of a double exemption to a widow of a veteran who also qualifies as a veteran herself. The question of whether one single individual may claim both exemptions would seem to be answered by the case of **Asplund v. Alarid**, supra. The intention of the legislature was interpreted in Opinion No. 5187, Report of Attorney General, 1949-1950 appearing at page 6. It was there stated that upon the husband's death, taxes would not be increased. Our statutes, as stated above, specifically provide for a double exemption if both husband and wife are living, qualified, veterans.

The case of **Dillard v. New Mexico State Tax Commission**, 53 N.M. 12, 210 P. 2nd 345 is in point. This case involved the question of whether or not a veteran's tax exemption also covered his wife's interest in the community property. The Court there said:

"The fact that the soldier's widow is entitled the exemption is persuasive that the soldier's wife is not **until she becomes a widow**, at which time **she is entitled to her own exemption not** that of her husband." (Emphasis added.)

Under the reasoning of the above authorities, a qualified veteran who is a woman is entitled to a tax exemption in **her own right**. A widow of a qualified veteran is entitled to a tax exemption in her **own right**, each being claimed under separate right, the fact that a woman is both a qualified veteran and widow of a qualified veteran does not operate to deprive her of an exemption to which she would otherwise be entitled. If otherwise qualified, a widow of a veteran who is herself a veteran, may lawfully claim both exemptions as to property to which she is entitled to claim such tax exemptions.