

## Opinion No. 43-4323

June 23, 1943

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Honorable H. B. Sellers, Chief Tax Commissioner, Santa Fe, New Mexico

We have your letter of June 16th, 1943, wherein you request an opinion of this office concerning the effect of the Soldiers' and Sailors' Relief Act on the collection of delinquent real and personal property taxes.

This same question was discussed by the various County Treasurers of the State at the recent convention of County Officials in Albuquerque. The material provision of the above mentioned act provides:

"(1) The provisions of this section shall apply when any taxes or assessments, whether general or special (other than taxes on income), whether falling due prior to or during the period of military service, in respect of personal property, money, or credits, or real property **owned and occupied for dwelling, professional business, or agricultural purposes** by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his dependents or employees are not paid. (Emphasis ours.)

"(2) No sale of such property shall be made to enforce the collection of such tax or assessment, or any proceeding or action for such purpose commenced, except upon leave of court granted upon application made therefor by the collector of taxes or other officer whose duty it is to enforce the collection of taxes or assessments. The court thereupon, unless in its opinion the ability of the person in military service to pay such taxes or assessments is not materially affected by reason of such service, may stay such proceedings or such sale, as provided in this Act, for a period extending not more than six months after the termination of the period of military service of such person.

"(3) When by law such property may be sold or forfeited to enforce the collection of such tax or assessment, such person in military service shall have the right to redeem or commence an action to redeem such property, at any time not later than six months after the termination of such service, but in no case later than six months, after the date when this Act ceases to be in force; but this shall not be taken to shorten any period, now or hereafter provided by the laws of any State or Territory for such redemption."

If the matter is brought to the attention of the State Tax Commission, or the proper County Official, that the owner of property coming within the statute is in the armed forces, the land should not be sold for taxes. However, the question occurs, when the person in the armed services or the members of his family fail to properly claim the relief accorded by the Soldiers' and Sailors' Act by failing to notify the proper officials. If, under such a circumstance, there is no knowledge concerning whether or not the

property should be sold due to a lack of knowledge concerning whether or not the owner is in the army, or whether or not the property comes within the statute, it is my opinion that, under these circumstances, the Tax Commission has no alternative but to proceed as provided by our statutes, without considering the Soldiers' and Sailors' Relief Act. Under such circumstances (3) applies when the person is discharged from the army, and such person must then, within six months, proceed to have such sale set aside or, otherwise, the sale would become valid.

The County Treasurers, in Albuquerque, while discussing this problem, deemed it advisable and will, when possible, run notices in various local papers, advising the public of the necessity to claim the benefits of this Act, and to notify the proper officials in case the provisions of this Act will be relied upon by the persons, or members of the families, in the service, for protection against the sale of property for delinquent taxes.

However, I wish to call the following matter to the attention of the Tax Commission and, therefore, quote from the latest text concerning the Soldiers' and Sailors' Relief Act that has been received by our State Law Library, compiled by William Fitz Gibbons, which provides:

"There is nothing in this Act which relieves a person in military service from the actual payment of debts or obligations which he may have incurred before entering such service. It is only when his ability to meet his obligations has been impaired, because of his military service, that the relief accorded by this Act applies; and this relief is principally against the penalties which would be imposed for nonpayment of such obligations. In the traditional American way, the question of the extent to which relief is offered generally is left to the discretion of our courts."

Hoping that the above general discussion of this problem will be of some benefit to you, I remain,

By HARRY L. BIGBEE

Asst. Atty. General