

Opinion No. 44-4453

February 7, 1944

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Scott H. Mabry, Assistant District Attorney, Albuquerque, New Mexico

We are in receipt of your letter of February 3, 1944, in which you state that a taxpayer of Bernalillo County lived in Albuquerque from 1928 to 1931, at which time he was transferred by his employer to Florida; that from 1931 to 1939 he worked all over the United States, never residing in any community for more than six months, and that he returned to Albuquerque in 1939, and has since made his home there.

In view of these facts, and the fact that this taxpayer served in the armed forces of the United States for 30 days or more during the time in which the United States was officially engaged in a war, you ask our opinion as to whether or not this man was a bona fide resident of New Mexico prior to January 1, 1934 within the meaning of Section 76-113 of the N.M. 1941 Compilation.

This involves two questions, first, whether or not this man ever was a bona fide resident of New Mexico prior to 1934, and second, whether or not it is necessary that he maintain such residence in order to claim his exemption.

In answer to the first phase of your question, it would appear that the taxpayer was a resident of New Mexico from 1928 until 1931. However, the answer to this would depend upon his intention during those three years, since it is not enough that he live here, but must also intend to make this state his residence.

As to the second phase of your question, you will please find enclosed a copy of Opinion No. 3134, written by a former Attorney General on May 12, 1939, in which he holds that if a soldier was a resident of New Mexico prior to 1934, the mere fact that he lost his residence for a few years would not prevent him from claiming the exemption when he again establishes his residence, due to the fact that Section 76-113 only requires that the soldier acquire residence in New Mexico prior to 1934, and does not require that such residence be maintained.

In the only case, to the knowledge of the writer, in which this question was presented to any of our courts, Judge Frenger held that a soldier was entitled to an exemption under such circumstances.

In view of the foregoing, it is my opinion that if the taxpayer intended to be a resident of New Mexico during the three years he lived here from 1928 to 1931, that he is entitled to such exemption.

By ROBERT W. WARD,

Assistant Attorney General