

Opinion No. 46-4945

August 23, 1946

BY: C. C. McCULLOH, Attorney General

TO: Mr. C. R. Anderson Assistant District Attorney Carlsbad, New Mexico

{*267} On August 15, 1946, one of my Assistants wrote Opinion No. 4941, in response to your request dated August 9, 1946, in which he expressed the opinion that a veteran who acquires property after January 1st in any year could claim exsoldier's exemption, and be entitled to exemption for that year.

I was absent from the office at the time this opinion was written, and the Assistant who wrote the opinion is now on his vacation, and I am unable to discuss the matter further with him. However, I do not agree with the result reached in the opinion and, for that reason, am overruling the same.

Section 76-201 of the N.M. 1941 Compilation requires all property, real, personal and intangible, to be declared, listed, assessed and taxed in the county where it is situated, on the 1st day of January of each year.

Section 76-203 of the N.M. 1941 Compilation, pertaining to declaration of property, requires the declaration to be made of all property as it exists on the 1st day of January of each year.

{*268} Section 76-210 of the N.M. 1941 Compilation requires the person declaring such property to make an oath or affirmation that the declaration is a true and correct statement of all taxable property owned by or under his control, and located in such county on January 1st of the year in which said declaration was made.

Section 76-412 of the N.M. 1941 Compilation provides that all taxes levied upon real estate shall be a lien thereon from the 1st day of January of the year in which the levy is made, and continue as such until paid or foreclosed by sale.

It is apparent that January 1st of each year is the date which determines the condition or status of taxability of property. If a veteran entitled to ex-soldier's exemption should own property on that date, the same would be exempt for that year, regardless of the fact that he may dispose of the property during the year. Conversely, if a person not entitled to exemption owns property on January 1st, the property is no exempt for that year, [Illegible Word] of the fact that a veteran [Illegible Word] to exemption may subsequently acquire the property.

I have been of this opinion for a number of years, and this advice has consistently been given by me several years ago, while I was Attorney for the State Tax Commission, when the question would arise during those years. I do not believe it advisable to

overthrow the policy and procedure which has been consistently followed by assessing officials over a period of years, in view of the statutes covering the subject.

This conclusion is also supported by a number of cases in other states dealing with the question of tax exemption generally, although I do not find any case directly in point.

In this connection, see *People v. Ladies of Loretto*, 92 N. E. 908, 246 Ill. 403; *Young Men's Christian Association v. City of New Orleans*, 123 So. 363, 11 La. App. 360; *Daugherty v. City of Philadelphia*, 172 Atl. 177, 112 Pa. Superior 570; *New York v. Tax and A. Commissioners*, 104 U.S. 466, 26 L. Ed. 632; *Wood v. McCook Water Works Co.*, 97 Neb. 215, 149 N. W. 417.

I trust that no great inconvenience has been caused the assessing officer by virtue of this changed opinion.