

Opinion No. 49-5184

January 7, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: Mike Gallegos, Commissioner Motor Vehicle Department Bureau of Revenue Santa Fe, New Mexico

{*2} We have your letter of December 24, 1948, in which you ask the opinion of this office as to whether or not the case recently decided by our Supreme Court, entitled Dillard et al v. State Tax Commission, affects Sec. 68-226 (k) of the 1941 Compilation, which said section reads as follows:

"(k) Every person **who by the terms and provisions of chapter 130 of the Laws of 1923 (Secs. 76-111 to 76-117) is entitled to an exemption of taxable property** of a total value of \$ 2,000 and who has not for the year in which he may be liable for the payment of a registration fee under the provisions {*3} of this section claimed or received such exemption on real or personal property shall pay under this section registration fees at 2-3 the above rates on one (1) or more cars of which he is the owner and entitled to property tax exemption by the terms of said chapter 130 of the Laws of 1923 (Secs. 76-111 to 76-117). Such person shall make affidavit that in any claim of exemption thereafter, during such year he will set forth the amount of reductions so received which shall reduce the amount of benefits received from such exemption to the (that) extent. No such person shall receive any reductions of registration fees in a greater sum during any one (1) year than an amount equal to the tax levied on \$ 2,000 of property in the school district in which he resides.

(1) The vehicle commissioner shall certify to the proper county assessor the amount of reductions received under the provisions of sub-paragraph (k) hereof by any such person and such assessor shall note the same on the proper tax rolls of said county."

Section 76-113 of the 1941 Compilation, insofar as is material here provides: "Real and personal property of every soldier shall be exempt from taxation in the sum of Two Thousand Dollars (\$ 2,000.00)"

Upon the wording of this section, the Supreme Court of New Mexico, in the above entitled cause, held that a soldier's exemption does not extend to his wife's interest in community property. The basis of this decision is that each party to the marriage relation has an existing, present, vested and equal interest in the community property. Therefore, since each party has a one-half interest only, the exemption may be claimed only upon the half interest owned by the party entitled to the exemption.

The Dillard case, of course, did not decide specifically the question of exemptions on motor vehicles, but the community property principles involved are identical, and the exemptions are granted only to those entitled thereto by Sections 76-111 to 76-117

inclusive of the 1941 Compilation, and it was upon a construction of these sections that our Supreme Court reached the decision discussed above. It is, therefore, the opinion of this office that a veteran entitled to exemption under the provisions of Section 68-226 (k) of the 1941 Compilation, may claim an exemption upon his one-half interest only if the vehicle or vehicles upon which exemption is claimed are community property. Thus, since the exemption is one third of the registration fee if the vehicle is the sole and separate property of the veteran, the exemption is only one-sixth of said fee if the veteran has only a one-half interest in the vehicle because of its status as community property.

To aid you in determining what is community property, I wish to quote from the court's opinion in the Dillard case the following:

"If he is married, it is presumed until it is shown otherwise by the claimant, that such property is community property; and the exemption will apply only to his half interest, unless he furnishes satisfactory evidence that the property standing in his name is his separate property."