

Opinion No. 50-5282

February 15, 1950

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. George Birner County Assessor Socorro County Socorro, New Mexico

{*131} I have your letter of February 3, 1950, requesting the opinion of this office as to the present status of the taxability of the community property interest of the wife of a veteran. Ordinarily, this office does not advise county officials, but due to the importance of your inquiry, your request shall be considered as having come through the proper channels.

The Supreme Court of the State of New Mexico, in *Dillard v. State Tax Commission*, 53 N.M. 12, 201 P.2d 345, held that the community property of a veteran and his wife could not be included within the \$ 2,000.00 veteran's exemption authorized by Section 76-113 of the 1941 Compilation, pocket supplement, and Article 8, Section 5 of the Constitution of New Mexico. The 19th Session of the Legislature, in attempting to aid the veterans and to allow exemption on community property, passed a statute waiving the tax lien on such community property for 1948 and prior years. The Legislature also passed a proposed constitutional amendment, being amendment No. 5, the material part of which reads as follows:

"Art. 8, Sec. 5. The Legislature may exempt from taxation property * * * including the community property or joint property of husband and wife, of every honorably discharged member of the armed forces of the United States * * *."

This amendment was adopted by the people in September, 1949.

Exemption is allowed by virtue of Section 76-113, as amended in 1947, which provides in part:

"Real and personal property of every soldier shall be exempt from taxation in the sum of Two Thousand Dollars (\$ 2,000.)"

It would seem that the veteran may not claim exemption on the wife's interest in community property for the 1949 taxes. The *Dillard* case, *supra*, clearly decided that property is taxed to the owner as it exists on the first day of January of a given year. Therefore, to determine whether or not exemption is allowed for the year 1949, we must look to the situation as it existed on January 1, 1949. At that time the law was clear as stated in the *Dillard* case. A veteran was not entitled to exemption on his wife's half of community property. The Legislature does not have power to grant such an exemption and unless the tax lien be waived for this year, the veteran must pay or face the prospect of having his property sold {*132} for taxes. As hereinabove stated, the waiver

of lien applies only to taxes for 1948 and prior years. Therefore, it would appear that the taxes must be levied, collected and paid for the year of 1949.

The question next arises as to the right to claim such exemption upon community property for the year 1950. The precise matter at issue is whether or not constitutional amendment No. 5, passed by the electorate at the last session of the Legislature, has the effect of allowing this exemption. It is to be noted that the section as amended is permissive only. The Legislature may exempt the property of the veteran and may or may not, as it wishes, include the community or joint property of husband and wife, just as it may grant exemption of any amount up to \$ 2,000.00. In other words, that particular section of the constitution is not self-executing. By its very terms it contemplates a legislative enactment carrying it into force. We must then turn to the present legislative enactment to see whether it is broad enough to cover community and joint property. It should be noticed that it applies to "real and personal property of every **soldier.**" It does not state of any soldier and his wife, but merely property of the soldier. The Dillard case held that the wife has a complete present vested interest in all community property equal to that of the husband and that she is as much the owner of her half as the husband is of his. Therefore, the property of the soldier as applied to community property can only be construed to include his one-half of that property. The Dillard case nowhere asserted that the Legislature had attempted to exempt the community property. On the contrary, the Court stated:

"Any attempt on the part of the Legislature to include the wife's interest as being exempt from taxation would be frustrated by the constitution, **and no such attempt has been made.**"

The Legislature was there construing the identical statute which we must construe at the present moment. According to the Court, it did not attempt to include the wife's interest. If it did not, and the Court so held, then the wife's interest is not today included within the exemption. It would appear that the wife's interest in community property may not be claimed as exempt by a veteran until such time as the Legislature passes a statute specifically authorizing it.

It is, therefore, the opinion of this office that the community property interest of the wife of a veteran cannot be considered as exempt from taxation until and unless the Legislature, pursuant to the permission granted it by the amendment of Article 8, Section 5 of the Constitution of New Mexico, passes a law granting such exemption.