

## **Opinion No. 57-15**

February 1, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Hilario Rubio, Assistant Attorney General

**TO:** TO: Mr. Arthur H. Gallup, Service Officer, New Mexico Veterans Service Commission, Espanola, New Mexico

### **QUESTIONS**

#### QUESTIONS

1. Are World War I honorably discharged veterans who served 90 days or over between April 6, 1917 and November 11, 1918, and who were residents of New Mexico before January 1, 1934, entitled to the \$ 2,000 veterans' tax exemption?
2. Are world War II honorably discharged veterans, who served 90 days or over between December 7 1941 and September 2, 1945, who, entered service while residing in New Mexico, or acquired residence in New Mexico prior to January 1, 1947, entitled to the \$ 2,000 veterans tax exemption?
3. Are honorably discharged Korean veterans who served 90 days or over between June 27, 1950 and July 27, 1953, entitled to the \$ 2,000 veterans' tax exemption whether enlisting from New Mexico or having acquired residence in same by any specified date?
4. Are peace-time veterans, entering service between the three specified war dates mentioned above and qualified under the 90 day service, honorable discharge, etc., entitled to veterans' tax exemption?

#### CONCLUSIONS

1. Yes.
2. Yes.
3. They must have enlisted from the State of New Mexico, and be residents of same.
4. No.

### **OPINION**

#### ANALYSIS

World War I Veterans, under the New Mexico Session Laws 1923, Chapter 130, in order to be entitled to the \$ 2,000 tax exemption, had to be honorably discharged, a resident of New Mexico, and must have served for thirty days or more at any time in which the United States was officially engaged in any war, including resident unmarried widows of such soldiers. The law now, however, is "not less than 90 days service while the United States was engaged in armed conflict." World War I was declared April 6, 1917, and ended November 11, 1918, when the Armistice was officially signed. See Vol. 28, Encyclopedia Americana, pages 283 and 284.

World War II started December 7, 1941, and ended September 2, 1945. This was the surrender of the Japanese on the flag-ship Missouri, and was the end of the armed conflict. See Vol. 29, Encyclopedia Americana, pages 559x x.

Concerning the Korean Conflict, there was no official declaration of war, but North Korea invaded South Korea on June 25, 1950, and our troops moved in June 27, 1950; so that the later date was the beginning of our entry in the Korean Conflict. See World Almanac 1956, at page 363. The end of the Korean Conflict has been set in our Opinion No. 6150, dated April 26, 1955, as July 27, 1953, at 2200 hours, 10 p.m., according to Senate Document 74, 83rd Congress, First Session, pages 98 et seq.

You state that our Opinion No. 6150, dated April 26, 1956, does not specify that said veterans had to enlist from New Mexico, or have acquired residence in New Mexico by any specified date. However, the last paragraph of Section 72-1-13, New Mexico Statutes Annotated, 1953 Compilation, specifically provides that such exemption, meaning the \$ 2,000 soldiers' tax exemption, shall not be permitted to be claimed by, nor allowed to, any person who was not either a resident of New Mexico at the time he entered on such duty, or who had not acquired residence in the State of New Mexico prior to January 1, 1947.

You also propounded the question as to whether peace-time veterans entering service between the three specified war dates mentioned above, and having qualified under the ninety day service, honorable discharge, etc., are entitled to the veterans' tax exemption.

The first tax exemption law for veterans was passed in 1928, being Chapter 130, and only allowed exservice men the exemption if they had served for thirty days or more at any time in which the United States was officially engaged in any war. In World War I, if these veterans were not officially engaged in war for at least thirty days or more, they are not entitled to the exemption. Section 76-111 of the 1941 New Mexico Statutes Annotated, provided that any soldier, etc., who served in the armed forces of the United States for thirty days or more at any time in which the United States was officially engaged in any war was entitled to the exemption. The law was still the same. However, in the Pocket Supplement of this Section, the law was changed under Chapter 15, Laws 1951, and in order for any soldier to be entitled to the \$ 2,000 tax exemption he had to be a resident of New Mexico and must have served in the armed forces of the United States for ninety days at any time in which the United States was officially engaged in

any war, and included persons of either sex as such honorably discharged members of the armed forces and also included resident unmarried widows of such honorably discharged members of the armed forces.

Section 72-1-11, N.M.S.A., 1953 Compilation, provides that any soldier who is honorably discharged as a member of the armed forces, is a resident of New Mexico, and had served ninety days during any period which the military forces are engaged in armed conflict on orders of the President of the United States, and shall also include resident unmarried widows of such honorably discharged members of the armed forces is entitled to the \$ 2,000 exemption. This is the last definition, and is the law today. It is the opinion of this office that any veteran who did not serve at least ninety days at any time during any period in which the military forces were engaged in armed conflict, etc., are not entitled to the exemption of \$ 2,000 because they are not covered by the law.

We trust the above answers your inquires.