

## Opinion No. 59-133

September 2, 1959

**BY:** HILTON A. DICKSON, JR., Attorney General

**TO:** New Mexico Veterans Service Commission Post Office Box 1723 Santa Fe, New Mexico. Attention: Mr. Manuel Armijo, Director

{\*204} This is written in reply to your request for an opinion on the following question:

Is a veteran exempt from the payment of ad valorem taxes for the taxable year during which property was purchased by the veteran from a non-veteran and which property was owned by the non-veteran on January 1st of such year?

It is my opinion that the veterans exemption laws do not exempt a veteran from the payment of ad valorem taxes for the taxable year during which property was purchased by the veteran from a non-veteran owning the property on January 1st of such year.

In reviewing generally what has been said concerning exemptions, we find that Corpus Juris Secundum, Vol. 84, at page 411, states as follows:

"Exemption, as applied to taxation, pre-supposes a liability, and is properly applied only to a grant of immunity to persons or property which otherwise would have been liable to assessment, and exists only by virtue of constitutional or statutory provisions."

The aforementioned general statement is borne out in New Mexico by our Constitution and Supreme Court decisions to the effect that all tangible property is subject to taxation in proportion to value and should be taxed, unless specifically exempt by the Constitution or by its authority. Sections 1, 3, and 5 of Art. VIII, New Mexico Constitution; Sims vs. Vosburg, 43 N.M. 255, 91 Pac. 2d 434, 435; Dillard vs. New Mexico State Tax Commission, 53 N.M. 12, 201 Pac. 2d 345.

Furthermore, in the Dillard case, supra, at page 22, the court stated that the Constitution in New Mexico did not grant the veterans exemptions, but authorized the legislature to do so in its discretion; that the legislature could make any regulations which in its wisdom it might deem necessary or helpful in facilitating the allowance of the exemption. The Court said:

"It is obvious that some regulation is required to determine those who are entitled to exemption."

In its discretion, the legislature, by virtue of the Laws of 1957, Chapter 169, Section 4, enacted what is compiled as Section 72-1-16B, {\*205} N.M.S.A., 1953 Compilation (P.S.), to provide for a situation concerning veterans' exemptions in the event an otherwise qualified veteran sells or otherwise disposes of his property to a non-veteran

or another veteran during the taxable year (See Attorney General's Opinion No. 57-321 interpreting this provision).

The question you have raised pertains to the converse situation where a veteran purchases property from a non-veteran owning the property on January 1st.

We have examined the veterans' exemption statutes to ascertain if the legislature in its discretion, by regulation, has provided for the allowance of a veteran's exemption during the taxable year in which property is acquired by a veteran from a non-veteran owning the property on January 1st of such year. Our search indicates that the legislature has not enacted a provision for such a situation.

According to the Dillard case, *supra*, and Section 72-2-10.1, N.M.S.A., 1953 Compilation, (P.S.) January 1st is the "tax day" in our state; consequently, where property purchased by a veteran is owned by a non-veteran on January 1st of the tax year during which the property is acquired by the veteran, the tax liability attaches according to the status of ownership of the property in the non-veteran as it existed on January 1st, and there is no exemption from the liability in favor of the veteran. The legislature has not provided to the contrary and we have no alternative but to interpret the factual situation outlined in your question according to existing law.