

Opinion No. 60-16

February 2, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Dan Sosa, Jr. District Attorney Third Judicial District Second Floor Court House
Las Cruces, New Mexico

QUESTION

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1. Can the County Assessor require proof of ownership of real property from taxpayers before accepting their declarations required by Section 72-2-3, N.M.S.A., 1953 Compilation?
2. Can the County Assessor require accurate or best available descriptions of real property from taxpayers before accepting their declarations required by Section 72-2-3?

CONCLUSION

1. No, unless the taxpayer is claiming a soldier's exemption.
2. See Analysis.

OPINION

{*357} ANALYSIS

Except in cases where a taxpayer is claiming a soldier's exemption, the New Mexico statutes are silent on the question of whether a taxpayer must, upon request, furnish proof of ownership of real property to the County Assessor at the time he makes his declaration of property in accordance with Section 72-2-3, N.M.S.A., 1953 Compilation. Under Section 72-1-16 (P.S.), it is clear that he must do so in order to obtain a soldier's exemption.

In order to determine whether such a requirement generally may be made by the Assessor, we must attempt to interpret what is required by Section 72-2-3. This section reads as follows:

"72-2-3. List of property -- Contents -- Valuation -- How fixed. -- Every person, firm, association or corporation shall, in each year, make a declaration of all property subject to taxation of which he is the owner or has the control or management, but in no case is he to fix the value of such property, or any portion thereof, except as hereinafter provided: but it shall be the duty of the county assessor to fix the valuation for the

purposes of taxation of all property contained in such declaration or of which he may otherwise obtain knowledge, at the full actual value thereof. Such declaration shall be made of all property as it exists on the first day of January of each year, and it shall show all the property to, claimed by, or in the possession or under the control or management of, the person making the declaration or of any firm of which he is a member, or of any corporation of which he is an officer, together with a statement of the county in which the property is situated or which it is liable to taxation, and a description of all real estate, such as would be sufficient in a deed to identify it so that title thereto would pass, and a detailed statement of all personal property, including the average value of merchandise for the year ending January 1st; Provided, that all property which [is] to be assessed and valued for the purposes of taxation by the state tax commission need not be declared and returned to the assessor by owner or owners thereof."

This section requires that the taxpayer declare all real property (as well as personalty) of which he is the owner or has under his control or management. It further requires that the declaration contain a description of the real property which would be sufficient to pass title thereto. There is no positive statement that the taxpayer prove he is the owner of the property. In our opinion, this lack of any positive requirement means that no such proof may be required from the taxpayer.

Our view is fortified by the fact that under Section 72-2-10.1 (P.S.), relating to the time and manner of making declarations, there also is no requirement that such proof of ownership be furnished. This section merely imposes the additional requirement that the person making the declaration affix his oath or affirmation that such declaration is a true, complete and correct statement of all taxable property owned by him or under his control or management and located in the county on January 1st of the year for which the declaration is made. This section imposes an even greater { *358 } burden on the taxpayer to declare property correctly, and appears to negate any requirement of proof of ownership imposed on the taxpayer by the Assessor.

Further, an examination of the duties of the Assessor as shown in Sections 72-2-1 et seq., relating to assessments generally indicate that it is not the duty of the Assessor to challenge the accuracy of the declaration in this regard, but merely to value the property so declared, or if there is no declaration, to make a valuation of property according to the best information available.

Accordingly, we conclude that the County Assessor cannot require proof of ownership from a taxpayer at the time he makes his declaration under Section 72-2-2 unless he is claiming a soldier's exemption as required by Section 72-1-16 (P.S.).

We turn now to your second question. In our opinion, the Assessor may require certain information in connection with the description of the real property declared. Section 72-2-3 specifically requires that the declaration describe such property in a manner sufficient to pass title thereto. It does not say that the Assessor must check to be sure that such a requirement be met. However, we feel that the Assessor may, in order to aid in the valuation of the property which duty he is charged with, make such demand. It

would seem that no valuation of land for the purpose of taxation can be properly made without the aid of a description of such land sufficient to identify it with at least some degree of certainty. This is in effect what Section 72-2-3 requires.

We cannot, nor shall we, attempt to discuss what constitutes a description sufficient to meet the requirements of Section 72-2-3. However, the following cases may be of some help. In **Otero v. Sandoval**, 60 N.M. 444, 292 P. 2d 319 a description of "NE1/4 160 acres" and "160 acres on 32-13-9" was ruled insufficient to pass title by means of a tax deed when the land had been so described on the tax rolls. Also, in **Richards v. Renehan**, 57 N.M. 76, 253 P. 2d 1046, it was ruled that a description of "Lot 3-4 S1/2 SW1/4 of Section 4, Township 16, Range 9" in a tax deed was not sufficient to describe a tract of land where the lots were surveyed Government lots which formed a part of an odd-sized surveyed section when such a description could be given three different meanings. For other examples of descriptions that were considered by the New Mexico court as insufficient see **Heron v. Ramsey**, 45 N.M. 483, 117 P. 2d 242 (1941) and **Manby v. Voorhees**, 27 N.M. 511, 203 Pac. 543.

We trust that the inquiries you have presented have been answered fully.

By: Philip R. Ashby

Assistant Attorney General