Opinion No. 63-13

March 7, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr. Ignacio Salas County Assessor Torrance County Estancia, New Mexico

QUESTION

QUESTIONS

1. Can a non-resident veteran claim the veteran's exemption on real estate owned by him in New Mexico?

2. If an otherwise qualified veteran left the state fifteen years ago, but has now returned and owns real estates within New Mexico, is he entitled to the veteran's tax exemption?

3. An otherwise qualified veteran has been stationed under military orders in the State of California since 1942. He made his home there, and has voted there for the past fifteen years. Now he has returned to New Mexico and owns real property within the state. Is he entitled to the veteran's tax exemption?

4. The wife of a qualified veteran, resident in New Mexico, has received a gift of real property, or has acquired it through inheritance. The deed shows only her name as grantee. Is the veteran's tax exemption applicable to the real estate?

CONCLUSIONS

1. No.

2. Yes.

3. Yes.

4. No.

OPINION

*{*32}* **ANALYSIS**

Under the wording of Sections 72-1-11 and 72-1-14, N.M. S. A., 1953 Compilation, the veteran's tax exemption is granted only to qualified veterans who established residence in New Mexico prior to certain specified dates, and who are residents of the state at the time the exemption is claimed. One who is not a resident of New Mexico, or who has moved away and established his residence elsewhere, is not entitled to the exemption.

See **Flaska v. State,** 51 N.M. 13, 177 P. 2d 174, and A. G. Opinion No. 57-271, October 23, 1957. Accordingly, we answer your first question in the negative.

Your second and third questions raise the issue of broken residence. An absence from the state for a period of fifteen years would strongly indicate that the person had established residence elsewhere. And, as in question 3, where the person establishes a home in another state and registers to vote there, he has established residence there. Ordinarily, a person does not lose New Mexico residence by reason of absence from the state under military orders, but this person has voluntarily chosen to establish residence in California by doing acts that indicate an intention to terminate New Mexico residence. However, in both cases the persons were residents of New Mexico before they left the state.

The veteran's tax exemption does not require continuous residence in New Mexico; it does not say that once residence is terminated the exemption is lost irrevocably. Of course, the requirement of residence means that the exemption is lost during a period of non-residence. But it has been the interpretation of this office that a qualified resident who moves away and loses his residence, but moves back and re-establishes his residence, becomes entitled again to the veteran's tax exemption. That was the holding of A.G. Opinion No. 3132, May 12, 1939. We believe that tax officials should continue to follow this long standing rule of interpretation, and we answer your second and third questions in the affirmative.

Turning to your fourth question, you will notice that Section 72-1-13, N.M.S.A., 1953 Compilation grants the veteran's tax exemption to the real and personal property of a soldier, as defined in the act, including the community or joint property of husband and wife. Under Section 72-1-16, N.M.S.A., 1953 Compilation, if the assessor has no personal knowledge that the person claiming the exemption is the actual and bona fide owner of the property, he must require proof of ownership, and the burden of proof is on the claimant. This requirement is mandatory, and proof must be made under oath.

Under Section 57-4-1, N.M.S.A., 1953 Compilation, when a married woman acquires property by an instrument in writing the property is presumed to be her separate property. We understand, in this case, that the deed to the property bears the wife's given name as grantee; neither her husband's name nor her marital status is mentioned. Presumptively, this property is her separate property. Since the exemption extends only to the veteran's separate property plus community and joint property, there is no exemption for the wife's separate property. (We have presumed that the wife is not an eligible veteran in her own right). This presumption is not conclusive, but may be overcome by proof. **Laughlin v. Laughlin,** 49 N.M. 20, 155 P. 2d 1010. We advise *{*33}* you to deny the claimed exemption unless the claimants can prove that the husband has a community or joint interest in the property. In addition to any other proof that you may require, we suggest that you require a correction deed to accurately express the claimed community or joint ownership.

By: Norman S. Thayer

Assistant Attorney General