

## **Opinion No. 63-148**

November 4, 1963

**BY:** OPINION of EARL E. HARTLEY, Attorney General

**TO:** Emilio F. Garcia Assessor, Union County P. O. Box 457 Clayton, New Mexico

### **QUESTION**

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Where property is assessed on ad valorem tax rolls in the name of a partnership, and one of the partners is a veteran entitled to a tax exemption under our laws, to what extent, if any, may such exemption be applied as to such property?

#### **CONCLUSION**

A partner who is a veteran has no right to apply his exemption against property owned by the partnership.

### **OPINION**

#### **{\*341} ANALYSIS**

Article VIII, § 5 of the New Mexico Constitution provides as follows:

"The legislature may exempt from taxation property of each head of the family to the amount of two hundred dollars (\$ 200) and the property, including the community or joint property of husband and wife, of every honorably discharged member of the armed forces of the United States who served in such armed forces during any period in which they were or are engaged in armed conflict under orders of the President of the United States, and the widow of every such honorably discharged member of the armed forces of the United States, in the sum of two thousand dollars (\$ 2,000). Provided, that in every case where exemption is claimed on the ground of the claimants having served with the armed forces of the United States as aforesaid, the burden of proving actual and bona fide ownership of such property upon which exemption is claimed, shall be upon the claimant."

In Opinion No. 58-70 this office held that where property was owned in joint tenancy by a veteran and a non-veteran, the exemption should be allowed to the full extent. Without now attempting to distinguish between property owned by a partnership and jointly owned property, it is sufficient to say that the type of ownership is not the same. Likewise, in Opinion No. 63-11 it was held that separate horizontal interests in property were not separately assessable.

Our Supreme Court in the case of **Dillard v. N.M. State Tax Commission**, 53 N.M. 12, considered this constitutional provision and held in substance that not only could there be no exemption not granted by statute but also that an exemption could not be granted by statute unless clearly authorized by the Constitution. We have no statute specifically exempting partnership property belonging to a partnership of which a veteran is a partner. Therefore, unless the type of ownership of the property comes within some statutory provision authorized by the constitutional provision above quoted, no exemption can be granted.

Our statutes are §§ 72-1-11 to 72-1-16, inclusive, N.M.S.A., 1953 Compilation. They all deal with {\*342} **property owned by the soldier** and his proof of ownership. Section 72-1-16, supra, provides in part:

"A. In each case where exemption is claimed under this act (72-1-11 to 72-1-17), if the assessor has no personal knowledge that the person claiming the same is the actual and bona fide **owner** of the property upon which the exemption is claimed, he shall require **proof of ownership** and the burden of proof thereof shall be upon the claimant. It shall be mandatory in all cases that proof under oath be furnished the assessor that the veteran **is the bona fide owner of the legal title thereto.**" (Emphasis supplied).

New Mexico has adopted the Uniform Partnership Act (§ 66-1-1, et seq., N.M.S.A., 1953 Comp.). Prior to the adoption of this Act by the various states having adopted it, there was considerable confusion and variance as to how partnership property was owned, and some states held that it was property owned in joint tenancy. Uniform Laws Annotated, Vol. 7, Uniform Partnership Act, p. 32, et seq.; "Partners and Partnerships", Barrett & Seago, Vol. 2, p. 464 et. seq. However, § 25 of the Uniform Act (§ 66-1-25, N.M.S.A., 1953 Comp.) has resolved the confusion and provides in substance, among other things, that there is a new and different type of ownership, where partnership property is concerned, known as partnership property. The section sets out the various incidents, but it appears rather definitely that there is no ownership of an individual interest in partnership property prior to dissolution.

Partnership property not being either joint or community property, and not being individually owned, and no portion thereof being individually owned under the Uniform Act does not come within any exemption granted by statute or authorized by the constitution. A veteran partner may not, therefore, apply any portion of his exemption to property owned by a partnership of which he is a partner.

By: James V. Noble

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