

## Opinion No. 66-45

April 11, 1966

**BY:** OPINION OF BOSTON E. WITT, Attorney General Myles E. Flint, Assistant Attorney General

**TO:** Mr. Bob White, Director, Department of Aviation, P. O. Box 579, Santa Fe, New Mexico

### QUESTION

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May the Soldiers' exemption provided for in Section 72-1-11 through 17, and 72-1-20 through 72-1-20.1, N.M.S.A., 1953 Compilation, be applied against the fees collected under the New Mexico Aircraft Registration Act, Section 44-5-1 through 15, N.M.S.A., 1953 Compilation, (P.S.), and if so how would it apply?

#### CONCLUSION

See Analysis:

### OPINION

#### {\*54} ANALYSIS

Section 72-1-13 N.M.S.A., 1953 Compilation, insofar as pertinent provides as follows:

"Real and personal property, including the community or joint property of husband and wife, of every soldier shall be exempt from **taxation** in the sum of two thousand dollars (\$ 2,000) . . ." (Emphasis supplied.)

The Aircraft Registration Act was enacted to provide for registration and uniform taxation of aircraft based on hangars in New Mexico. It provides in Section 44-5-11, N.M.S.A., 1953 Compilation, for the collection of certain "registration fees" for each aircraft depending upon certain classifications. This section further provides that the "fee" set by this section is in lieu of all personal property taxes.

It would appear from looking at the statutes that we are dealing with two different categories or objects, one being a "tax" and the other a "fee." However, an examination of the case law would indicate that the name given to a particular assessment is not the governing consideration. An examination of law indicates that a "fee" is generally defined as a charge for a specific service rendered. In contrast an assessment is determined to be a tax, if it is a contribution exacted pursuant to legislative authority for the purpose of raising revenue to be used for public or governmental purposes. **Gumby**

**v. Yates**, 214 Ga. 17, 102 S.E. 2d 548 (1958); **Dickson v. Jefferson City Bd. of Education**, 311 Ky. 781, 225 S.W. 2d 672 (1949).

Applying the reasoning of the above cases to the statutes under consideration here, it is our opinion that insofar as the registration fee collected under the Aircraft Registration Act is a fee which is used for maintaining governmental functions or for public or governmental purposes it is a tax. Under Section 44-5-14, N.M.S.A., 1953 Compilation (P.S.), all of the fee with the exception of \$ 5.00 is paid into the county treasurer in the same manner as personal property taxes. Therefore to that extent the soldiers' exemption would be applicable to that portion of the registration fee.

Section 44-5-14, N.M.S.A., 1953 Compilation, provides that \$ 5.00 out of every registration fee shall be forwarded to the State Aviation Board and that amount should be used for the purposes of effectuating the provisions of the Aircraft Registration Act. It is our opinion that the \$ 5.00 fee which is collected as a portion of the registration fee, is a fee as defined by the **Gumby and Dickson** cases, *supra*, and that the soldiers' exemption would be applicable to that portion of the registration fee.

The second portion of the question asked in this opinion is how the exemption should be applied if it is applicable to registration fees under the Aircraft Registration Act. It is our belief that in order for a person to get the effect of the exemption provided for under the soldiers' exemption act, he must obtain first a certificate of eligibility as provided {55} for in Section 72-1-20, N.M.S.A., 1953 Compilation, see that his name appears on the list of persons entitled to the soldiers' exemption which is held by the county assessor, pursuant to Section 72-1-14, N.M.S.A., 1953 Compilation, and he must designate the property to be exempted pursuant to the terms of Section 72-1-15, N.M.S.A., 1953 Compilation. This is the usual procedure by which a soldier qualified under the definitions contained in the act is enabled to receive the exemption provided for in the act. The effect of this opinion is that if a person does seek the soldiers' exemption against aircraft property he would be entitled to have it applied against all of the registration fee with the exception of \$ 5.00 which amount is an actual fee and not subject to being waived under the Veterans' Exemption.