

Opinion No. 67-25

February 15, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Honorable Robert D. Jordan State Representative Legislative Executive Building
Santa Fe, New Mexico

QUESTION

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Must the veteran's exemption which is allowed by Article VIII, Section 5 of the Constitution be taken from the true or market value of the property or is it to be taken from a fraction of the value?

CONCLUSION

From true or market value.

OPINION

{*30} ANALYSIS

New Mexico Constitution Article VIII, Section I provides:

Taxes levied upon tangible property shall be in proportion to the value thereof, and taxes shall be equal and uniform upon subjects of taxation of the same class.
(emphasis supplied)

Article VIII Section 1 does not require property taxes to be levied upon the full market or true value of the property, but merely requires {*31} that taxes levied must be in proportion to the value of the property. In fact, none of the counties levy the tax upon the full market value of the property. In arriving at the value to which the millage rate will be applied the county assessor usually determines the true value of the property, takes a percentage of this amount, and to this percentage he applies the millage rate to determine the tax liability of the individual taxpayer.

New Mexico Constitutional Article VIII, Section 5 provides in part:

The legislature may exempt from taxation property of each head of the family in 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 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 \$ 2000).

The legislature has exempted two thousand dollars of the veteran's property in Section 72-1-13 New Mexico Statutes Annotated, 1953 Compilation.

You asked if the exemption provided by Section 72-1-13 should be taken from the true or market value of the property or whether the exempt property is to be deducted from a percentage of the actual value of the property.

Only one New Mexico case has any direct bearing on this problem, and that case deals with the head of household exemption which is contained in the same section of the Constitution as the veteran's exemption. In 1914 in the case of **Samosa v. Lopez**, 19 N.M. 312, 142 P.927 the New Mexico Supreme Court was faced with the problem of determining whether the head of household exemption should be deducted from the actual true value of the property for ad valorem tax purposes or whether the deduction should come from 1/3 of actual cash value of the property. The Court said that it was the intention of the legislature to fix the market or cash value of the property as the basis of taxation to be first ascertained in determining the proportion of the taxpayer's burden. The Court then said:

What the purpose or intent of the legislature may have been in providing that one-third of the true value should be taken for purposes of taxation may be subject to conjecture, but that all property, real and personal, is subject to taxation at its true or cash value, as herein defined, is not and cannot be disputed.

The statute is clearly intended to provide that property to the amount of two hundred dollars shall be exempt, and as all property is subject to taxation at its true value the exemption must necessarily be deducted from this value. To permit the deduction from one-third of the true value would in effect be, to materially increase the amount of the exemption.

It was held that the head of household exemption must be deducted from true value rather than a percentage thereof. As has already been pointed out the constitutional provision allowing veteran's exemptions and head of household exemptions are in the same section of the Constitution. The statutory exemptions follow the language of the Constitution. The two provisions are indistinguishable in their effect.

Samosa v. Lopez, supra, has never been overruled. We feel that the reasoning of the Court in ^{*32} **Samosa** when applied to this problem requires that we advise that the veteran's exemption be deducted from actual or cash value rather than a percentage thereof.

By: Joel M. Carson

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