

Opinion No. 81-14

July 14, 1981

OPINION OF: Jeff Bingaman, Attorney General

BY: Jill Z. Cooper, Deputy Attorney General

TO: Senator Manny M. Aragon, 809 Richmond, S.E., Albuquerque, New Mexico 87106

CONSTITUTION - NEW MEXICO; TAXATION

Synopsis: The rule of strict construction of tax exemption statutes does not permit an expansion of the clear provisions of the applicable laws and regulations to apply the veteran tax exemption to a veteran whose service in the armed forces began **after** September 2, 1945.

QUESTIONS

May a New Mexico resident who was honorably discharged from the armed forces after serving from September 17, 1946, until February 9, 1948, be denied the veteran tax exemption authorized by Section 7-37-5 NMSA 1978?

CONCLUSIONS

Yes.

ANALYSIS

Article VIII, Section 5 of the New Mexico Constitution provides that

"The legislature may exempt from taxation . . . 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 of which they were or are engaged in armed conflict under orders of the president of the United States, and the widow or widower of every such honorably discharged member of the armed forces of the United States, in the sum of two thousand dollars (\$2,000)."

OPINION

This provision, which was initially adopted in 1921 and subsequently amended in 1949, 1953 and 1973, has been construed as an express power granted to the legislature to allow tax exemptions to all honorably discharged soldiers who served while the United States was engaged in war. **Flaska v. State**, 51 N.M. 13, 24, 177 P.2d 174 (1946).

Pursuant to this power, the legislature has enacted Section 7-37-5 NMSA 1978 which states, in pertinent part,

"A. Two thousand dollars (\$2,000) of the taxable value of property, including the community or joint property of husband and wife, subject to the tax is exempt from the imposition of the tax if the property is owned by a veteran or the veteran's unmarried surviving spouse, if the veteran or surviving spouse is a New Mexico resident. The exemption shall be deducted from taxable value of property to determine net taxable value of property.

B. The veteran exemption shall be applied only if claimed and allowed in accordance with Section 7-38-17 NMSA 1978 and regulations of the property tax division.

{*238} C. As used in this section, "veteran" means an individual who:

(1) has been honorably discharged from membership in the armed forces of the United States;

(2) served in the armed forces of the United States on active duty continuously for ninety days, any part of which occurred during a period in which the armed forces were engaged in armed conflict under orders of the president; and

(3) was a New Mexico resident prior to:

(b) January 1, 1947, if the period of armed conflict during which the person served was World War II or any other conflict prior to that time but subsequent to the ending of hostilities of World War I; . . ."

The veterans exemption thus extends to persons who

(1) were honorably discharged from the armed forces;

(2) served on active duty "during a period in which the armed forces were engaged in armed conflict"; and

(3) were residents of New Mexico Prior to certain specific dates relative to such periods of armed conflict.

Although neither the constitution nor the statutes define the periods of armed conflict in terms of specific dates, Section 7-35-5(B) provides that the veteran exemption shall be applied in accordance with regulations of the property tax division. As a rule, regulations adopted by an administrative agency pursuant to powers delegated to them by the legislature have the force of law. See, e.g., **Paul v. United States**, 371 U.S. 245 (1963). Pursuant to Section 7-38-17 NMSA 1978, the property tax division is authorized to promulgate regulations governing veteran exemptions. The division has, accordingly,

determined by regulation that the "termination of armed conflict during World War II was September 2, 1945." PTD Regulation 30-5:2(T).

It is well-settled that taxation is the rule and exemption is the exception. **Sisters of Charity of Cincinnati, Ohio v. County of Bernalillo**, 93 N.M. 42, 596 P.2d 255 (1979); **Flaska v. State**, *supra*. Statutory exemptions are strictly construed in favor of the taxing authority and the taxpayer's claim to an exemption must be clear and unambiguous. **Chavez v. Commissioner of Revenue**, 82 N.M. 97, 476 P.2d 67 (Ct. App. 1970). Thus, in order to claim a veteran tax exemption for World War II, a person must have served in the armed forces before September 2, 1945, as clearly stated in the applicable regulation.

It may be noted in Opinion of the Attorney General No. 57-15, dated February 1, 1957, this office concluded, for purposes of the New Mexico tax exemption statute, that

"World War II started on December 7, 1941, and ended September 2, 1945. This was the surrender of the Japanese on the flag-ship Missouri, and was the end of armed conflict."

However, for purposes of federal veteran benefit laws, Congress has defined World War II to mean "the period beginning on December 7, 1941, and ending on December 31, 1946." 38 U.S.C. § 101(8). Nevertheless, the fact that there may be a difference of opinion as to the termination date of World War II does not defeat the validity of the {*239} regulation adopted by the property tax division.

In short, the constitution grants the legislature the power to create a property tax exemption for veterans who served during armed conflict. The legislature has delegated to the property tax division the authority to promulgate regulations governing such exemptions. The division regulation defining the period of armed conflict for World War II veterans has the effect of law and, therefore, veterans who did not serve during the period defined by regulation are not entitled to a property tax exemption.

The rule of strict construction of tax exemption statutes does not permit an expansion of the clear provisions of the applicable laws and regulations to apply the veteran tax exemption to a veteran whose service in the armed forces began **after** September 2, 1945.

ATTORNEY GENERAL

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