

Opinion No. 89-01

January 9, 1989

OPINION OF: HAL STRATTON, Attorney General

BY: Mary Ann S. Hughes, Assistant Attorney General

TO: Michael D'Arco, Director, Veterans' Service Commission, P.O. Box 2324, Santa Fe, New Mexico 87503

QUESTIONS

Whether those merchant marine seamen, who served in active oceangoing civilian employment during World War II during the period from December 7, 1941 through August 15, 1945 and who have been issued discharge certificates from the U.S. Coast Guard for the purpose of receiving federal benefits, are "veterans" as defined by Section 7-37-5 NMSA 1978 and thus eligible to apply for the New Mexico veteran property tax exemption?

CONCLUSIONS

No.

ANALYSIS

You have asked our Office whether certain civilian World War II merchant marine seamen, now declared eligible for federal benefits administered by the Veterans Administration, are also eligible for the New Mexico veteran property tax exemption pursuant to Section 7-37-5 NMSA 1978 as amended. Pursuant to Section 7-38-17 NMSA 1978, the Commission has a duty to issue Certificates of Eligibility for the veteran property tax exemption to those individuals (or their surviving unmarried spouses) who meet the definition of "veteran" as defined in Section 7-37-5.

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

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 or widower of every such honorably discharged member of the armed forces in 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 claimant's having served with the armed forces of the United States as aforesaid, the burden of providing actual and bona fide ownership of such property upon which

exemption is claimed, shall be upon the claimant. (As amended November 3, 1914, September 20, 1921, September 20, 1949, September 15, 1953, and November 6, 1973.) [Emphasis added]

Section 7-37-5 NMSA 1978 defines "veteran" as follows:

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 division.

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 specified in Paragraph (3) of this subsection; and

(3) served in the armed forces of the United States during one or more of the following periods of armed conflict under orders of the president:

(a) any armed conflict prior to the World War I;

(b) World War I which, for the purposes of this section is defined as the period April 6, 1917 through April 1, 1920;

(c) World War II which, for the purpose of this section, is defined as the period December 7, 1941 through December 31, 1946;

(d) The Korean conflict which, for the purposes of this section is defined as the period June 27, 1950 through January 31, 1955; or

(e) the Vietnam conflict which, for the purposes of this section, is defined as the period August 5, 1964 through May 7, 1975.

D. For the purposes of Subsection C of this section, a person who would otherwise be entitled to status as a veteran except for failure to have served in the armed forces continuously for ninety days is considered to have met that qualification if he served during the applicable period for less than ninety days and the reason for not having

served for ninety days was a discharge brought about by service-connected disablement.

E. For the purposes of Paragraph (1) of Subsection C of this section, a person has been "honorably discharged" unless he received either a dishonorable discharge or a discharge for misconduct. [Emphasis added.]

The dispositive issue, for purposes of this analysis, is whether or not the service of civilian merchant marines on ocean-going vessels during World War II constituted service in the armed forces of the United States for the purposes of Article VIII, Section 5 and Section 7-37-5.

New Mexico law does not define "armed forces of the United States," and therefore we logically look to federal law for that definition. 10 U.S.C. § 101(4) defines "armed forces" as "the Army, Navy, Air Force, Marine Corps, and Coast Guard." Civilian employment as a merchant marine in ocean-going service during World War II is not included in this definition of "armed forces".

The United States Congress, in the GI Bill Improvement Act of 1977 (Public Law 95-202, Section 401), authorized the Secretary of Defense to recognize as active duty service in the armed forces of the United States the service of certain individuals in certain groups who rendered service to the armed forces of the United States during World War II in a civilian capacity for the purpose of receiving benefits administered by the Veterans Administration. On January 19, 1988 the Secretary issued a decision that certain merchant marine seamen who served in active ocean-going service from December 7, 1941 to August 15, 1945 were veterans and eligible to receive discharge certificates issued by the U.S. Coast Guard so that they could apply for benefits administered by the Veterans Administration. Public Law 95-202's legislative history reveals that Congress wanted to reward the efforts of certain civilian groups that assisted the armed forces of the United States during World War II by making them eligible to receive benefits from the Veterans Administration. However, no language in Public Law 95-202 makes World War II civilian merchant marine employment service in a branch of the armed forces of the United States for any other purpose, and we are aware of no other federal statute or regulation that includes, expressly or implicitly, civilian merchant marines in the United States armed forces.

Tax exemption statutes are to be strictly construed, and this rule of construction is applicable to veterans exemption statutes. *Flaska v. State*, 51 N.M. 13, 24, 177 P.2d 174 (1946). We must conclude that while Congress has recognized the service of certain civilian groups in World War II for the purpose of receiving federal benefits, civilian World War II merchant marine seamen did not "serve in the armed forces of the United States" as contemplated in Article VIII, Section 5 of the New Mexico Constitution and Section 7-37-5 NMSA 1978.

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