

## Opinion No. 23-3709

June 4, 1923

**BY:** JOHN W. ARMSTRONG, Assistant Attorney General

**TO:** Requested by: Hon. John W. Skipwith, Major Q. M. C., Acting Adjutant General, Santa Fe, New Mexico.

**Construction of Soldiers' Exemption Act: Assessors Should Extend Exemptions on Tax Rolls -- Required to Prepare List of Soldiers and Allowing Exemptions -- any Resident Soldier Entitled to \$ 2,000.00 Exemption and from Payment of all Road Taxes -- Not Necessary that Soldier was a Resident at Time of Enlistment -- Honorable Discharge Defined -- No Person Authorized to Deduct Road Tax from Soldiers' Pay Check.**

### OPINION

{\*59} We have your inquiry requesting a construction of the Soldiers' Tax Exemption Act passed at the last session of the Legislature, which Act will be Chap. 130, S. L. 1923. Apparently some assessors claim they have no authority to extend the exemptions on the tax rolls.

{\*60} As to the latter point, we see no reason for any assessor's failure or refusal so to extend the exemptions allowable. Section 4 of the Act provides:

"The County Assessors shall annually prepare a list of soldiers resident in their respective Counties entitled to said exemption and shall allow said exemptions to the Soldiers whose names appear in said list. Said list shall be prima facie evidence that the persons whose names appear therein are entitled to the exemption allowed by this Act, subject to the provision in Section 6 regarding proof of ownership of the property upon which such exemption is claimed. Any soldier entitled to said exemption whose name is omitted from said list may require his name to be inserted therein upon presenting proof to the assessor that he is entitled to the exemption granted herein, and upon refusal of the Assessor to insert his name in said list, such person may petition the District Court, without cost and, upon proper proof the Court shall require the Assessor to insert his name in the said list, but such application to the Assessor or a petition to the Court must be made or filed prior to the delivery to the County Treasurer of the tax roll for the year for which exemption is sought."

The Act carries the emergency clause and became effective March 12, 1923. If any assessor has not prepared the list and allowed the exemption as provided by said Section 4, he has probably not complied with the intent of the law. This section, of course, applies only to the year 1923 and subsequent years. The provision of the Act, covering this point, for the year 1922 is as follows:

"The exemptions hereunder shall apply to all taxes, including road taxes, assessed and levied in the year 1922, upon application to the County Treasurer therefor and proof of the right thereto and if such tax has been paid, the County Treasurer shall refund the amount to the person paying same. If such exemption or refund is refused by the County Treasurer, the person claiming same may petition the District Court of the County without cost to order the Treasurer to make such refund, and upon proper proof the said Court shall enter such orders as may be necessary to afford such claimant proper relief. The County Treasurer shall inform the County Assessor of the granting of any exemption to any person under the provisions of this section and the Assessor shall include the name of such person in the list required by Section 4 of this Act."

Any soldier, resident of New Mexico, is entitled to the \$ 2,000.00 exemption, and is exempt from the payment of all road taxes. In addition to Section 7 hereinbefore quoted, Section 3 of said Act provides:

"Real and personal property of every soldier shall be exempt from taxation in the sum of two thousand dollars. Said exemption shall apply to all taxes levied in the year 1923 and all which may thereafter be levied, but the said exemption shall not apply to any property held in trust by any soldier, except to the extent of the *{\*61}* legal beneficial interest of such soldier therein. In addition to said exemption said soldiers are hereby exempted from the payment of road taxes heretofore or hereafter levied."

It is not incumbent on the soldier to show that he was a resident at the time of enlistment but only that he is a resident of New Mexico at the time he is entitled to make claim for exemption. The term "Soldier" is defined by Section 1 of the Act as follows:

" 'Soldier' shall mean every honorably discharged soldier, sailor, marine and army nurse resident of New Mexico and who served in the armed forces of the United States for thirty days or more at any time in which the United States was officially engaged in any war, including resident unmarried widows of such soldiers, sailors and marines."

What constituted an honorable discharge is defined by Section 2 of said Act as follows:

"Excepting a dishonorable discharge, or one for misconduct, any discharge, including furloughs to the reserve or order relieving a member of a reserve corps from active duty, shall constitute an honorable discharge for the purposes of this Act."

Under the provisions of Chapter 104, S. L. 1923, persons, firms or corporations, having employees, are not required to furnish the County Treasurer lists of soldiers, exempt from the payment of said road tax, nor is such person, firm or corporation required or authorized to pay any treasurer any amount whatever on account of road taxes for or on behalf of any such soldier, except when such soldier may voluntarily direct such payment. No person, firm or corporation is authorized under the law to deduct from such soldier's pay check any sum whatever for or on account of any road tax. Said Chapter 104 does not become effective prior to June 9, 1923, but ever after said date the latter Chapter will not apply to or affect the road tax exemption for such soldiers.