

## Opinion No. 23-3735

October 8, 1923

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

**TO:** Requested by: Hon. John W. Skipwith, Adjutant General, Santa Fe, New Mexico.

**Soldiers Must Make Application to Assessor, or Petition Court, Prior to Delivery of Tax Rolls to County Treasurers for Year for Which Exemption is Sought, Etc.**

### OPINION

{\*93} The questionnaire on the 1923 Soldiers' Exemption Act submitted by Hon. Bronson M. Cutting, Department Commander, American Legion, has been examined and we are answering you by propounding his inquiries and submitting our answers as follows:

{\*94} 1.

Q. What is a service man to do who has paid his full property taxes for 1922?

A. The soldier should apply to the County Treasurer of the county where his property may be located for a refund of the taxes paid. He should make proof to such treasurer that he is a resident soldier entitled to the exemption; that he was such, January 1, 1922; that, at that time, he was the actual **bona fide** owner of the property on which exemption is claimed; and that he paid such taxes for the year 1922. This proof may be made by affidavit or in any other way satisfactory to the Treasurer. If the Treasurer should refuse to allow refund, the soldier may petition the District Court, without cost to him, setting up the foregoing facts and the refusal of the Treasurer and submit proofs to the court to substantiate same. The court will thereupon order the County Treasurer to make the proper refund.

2.

Q. What is a service man to do who has not yet paid his 1922 taxes?

A. He should make claim for exemption to the County Treasurer and proceed in the same manner as hereinbefore described for refund. On refusal of the Treasurer to grant the exemption, his application for such may be made to the District Court as hereinbefore described. The only difference in the procedure will be that the soldier will not be required to allege or prove that the 1922 taxes have been paid.

3.

Q. What is a service man to do who has failed to have his name included as entitled to exemption on the 1923 tax rolls?

A. He should proceed at once to make proof to the assessor that the soldier is entitled to the exemption by a showing of facts hereinbefore described except that his proofs should apply to 1923 only. If the assessor refuses to place the soldier's name on the list as required by Sec. 4, Chap. 130, S. L. 1923, the soldier should make his application to the District Court and submit proofs as hereinbefore indicated.

4.

Q. What is a service man to do who has paid \$ 3.00 road tax for 1923 or contributed labor on the roads during 1923?

A. The 1922 road tax is the only tax payable until Dec. 1, 1923. The 1922 road tax is paid between Dec. 1, 1922 and Dec. 1, 1923. The 1923 road tax will not be payable until after Dec. 1, 1923.

5.

Q. What is a service man to do who has neither paid nor worked, but is hereafter called upon to do so?

A. He should pay or work out his road tax for the year 1922 which is collectible between Dec. 1, 1922 and Dec. 1, 1923.

6.

Q. Does Sec. 7 of the Exemption Act, which outlines the procedure for the refunding of the taxes already paid, apply to every year, or is it limited to the 1922 taxes only?

A. It is limited to the 1922 taxes. Soldiers, for years subsequent to 1922, must avail themselves of their privilege of forcing {\*95} their names on the list, as described in Sec. 4 of said Act, and thereby procure exemptions for 1923 and subsequent years without the necessity for refunds.

The soldiers desiring exemption of either property or road taxes for the year 1923 and subsequent years, should read carefully said Sec. 4 of the Exemption Act -- particularly the following provision:

"\* \* \* 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 rolls for the year for which exemption is sought."