

## Opinion No. 26-3876

January 29, 1926

**BY:** JAMES N. BUJAC, Assistant Attorney General

**TO:** Requested January 22, 1926, by Hon. Thomas A. Whelan, District Attorney, Clayton, New Mexico.

(1) United States officially engaged in war with Germany from April 6, 1917, until July 2, 1921. (2) Soldier who served in the armed forces of the United States for thirty days or more during that time is entitled to the tax exemption provided by Chapter 130, Session Laws of 1923.

### OPINION

Your request is as follows:

"(1) Between what dates was the United States officially engaged in war during the late war?

(2) Can a soldier who served in the armed forces of the United States for more than thirty days between the dates of the Armistice and the adoption of the resolution by Congress, which concluded the peace with Germany, and was honorably discharged, claim the exemption provided by Chapter 130, of the Session Laws of 1923?"

Answering your request in the foregoing order, the United States Circuit Court of Appeals for the Ninth Circuit in the case of Miller, et al v. Humphrey, 7 Fed. (2d) 330, on August 3, 1925, held that "a state of war actually existed with Germany from April 6th, 1917, until July 2, 1921, \* \* \*" And in the case of Zimmerman, et al v. Hicks, et al, 7 Fed. (2d) the Circuit Court of Appeals for the Second Circuit held that "war between the United States and Germany ceased on July 2, 1921. \* \* \* despite earlier resumption of commercial relations," citing the cases of Re Miller, 281 F. 764; Swiss National Ins. Co. v. Miller, 266 U.S. 42, 45 S. Ct. 213. In view of these decisions, it is my opinion that the United States was officially engaged in war with Germany from April 6, 1917, until July 2, 1921.

That being the case, and in so far as § 1 of Chapter 130, Session Laws of 1923, defines "soldier" as "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, \* \* \*", it is also my opinion that a soldier who served in the armed forces of the United States for thirty days or more during the period from April 6, 1917, until July 2, 1921, is entitled to the tax exemption provided by Chapter 130, Session Laws of 1923.