

Opinion No. 38-1912

March 16, 1938

BY: FRANK H. PATTON, Attorney General

TO: Mr. John D. Bingaman Commissioner of Revenue Santa Fe, New Mexico.
Attention: Mr. H. L. Andrews, Auditor, Succession Tax Division

{*221} As I understand your request of March 10, 1938, your inquiry is whether an estate in excess of \$ 500.00, subject to the 2% succession tax, is entitled to the \$ 500.00 exemption under Section 141-1101, 1929 Compilation, as amended by Section 1, Chapter 181, Laws of 1937.

The administrative interpretation of this section before the 1937 amendment had always been that whereas the \$ 10,000.00 exemption was allowable even though the estate exceeded \$ 10,000.00, nevertheless estates passing to Class 2 were exempt only if they did not exceed \$ 500.00, but if such an estate exceeded \$ 500.00, the whole of it was taxable without exemption. This was because of the difference in language between the two exemption provisions.

The 1937 amendment changed the language providing for the \$ 500.00 exemption to correspond with that in the old law providing for the \$ 10,000.00 exemption, presumably with the knowledge of the interpretation given to the \$ 10,000.00 exemption. Therefore, they both should be interpreted in the same manner, and a \$ 500.00 exemption is allowable in full, (or prorata where the estate goes to different classes) even though such an estate exceeds the sum of \$ 500.00.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.