

Opinion No. 43-4251

March 15, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Scott H. Mabry, Assistant District Attorney, Albuquerque, New Mexico

We are in receipt of your letter of March 11, 1943, in which you relate that certain soldiers are claiming the \$ 2,000.00 exemption from taxation. You state that in order to show the constitutional and statutory requirements of an honorable discharge, these soldiers state that they were honorably discharged from the Army for a moment just before receiving their commissions.

This is primarily a question of fact, since by Section 76-112, honorable discharge is defined as "any discharge or order relieving a member of a reserve corps from active duty, excepting a dishonorable discharge, or one for misconduct, is an honorable discharge." Thus, the circumstances causing the discharge, or the length of time during which the soldier was discharged would make no difference.

In construction it appears to me that each case would have to be determined on its separate circumstances, and if the person claiming exemption could show that in fact he had been honorably discharged, and had met the other requirements of our statutes, it would make no difference that the discharge was effective for only a short period of time. However, the claimant would have the burden of proving this fact.

In conclusion I might say that I find no decision in the United States dealing with this question, and also that I have discussed this matter with several Army officers, and find that they were discharged from the Army prior to receiving their commissions. Lieutenant Hutton from Camp Luna in Las Vegas, New Mexico, stated that he received a formal discharge, that he walked off the base in civilian clothes, and was not subject to Army regulations until after he had been commissioned as an officer.

Trusting that the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General