



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

May 1, 1962

Mr. John T. Cox
County Attorney, Bell County
Belton, Texas

Opinion No. WW-1322

Re: Liability of member of
the Armed Forces who claims
a homestead in Texas for
ad valorem taxes on personal
property.

Dear Mr. Cox:

Your recent letter requests the opinion of the Attorney General of Texas in answer to your inquiry as follows:

"Would a member of the Armed Forces be exempt from personal property tax even though he has purchased real estate and claimed same as homestead exemption."

Our answer to your question is that any member of the Armed Forces who legally claims a homestead exemption from Texas ad valorem taxes is a "citizen" of this State for all purposes of ad valorem taxes and that all personal property owned by him and as defined in Article 7147 V.C.S., and which is not exempt from such taxes by other provisions of Texas law, is subject to ad valorem taxes.

You state that the person in question has claimed a homestead exemption. Whether his home is legally established in Texas is a question to be determined from all the relevant facts. For purposes of this opinion we assume the person is qualified under our state laws to claim and that he does claim a homestead exemption to realty in this State.

The only law which must be considered in answering your question, other than the laws of Texas relating to homesteads and liability of citizens of this state for ad valorem taxes, is the following section of the Soldiers' and Sailors' Civil Relief Act of 1940.

"(1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession,

or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district: Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

"(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That the license, fee, or excise required by the State, Territory, possession, or District of

Columbia of which the person is a resident or in which he is domiciled has been paid." 50 U.S.C.A. Section 574. (58 Stat. 722, c. 397, sec. 1).

The Soldiers' and Sailors' Relief Act (supra) is clear wherein it states that no person shall have

" . . . lost a residence or domicile . . . solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, . . . or political subdivision. . . while, and solely by reason of being, so absent. . . ."

Neither do the laws of Texas impress upon one who has purchased and is living in a dwelling house the status of owning and using the dwelling house as a homestead. However, we believe the law does impress upon one who has purchased real estate in this state and claims it as a homestead, and who meets the requisites of having a legally recognized homestead, the status of being a citizen for the purpose of incurring taxes on all his property, whether real or personal, subject to ad valorem taxes under Texas laws.

Whether the head of a family claims one piece of real estate or another as his homestead is first a matter of his own free choice and intention. Commercial Credit Corporation v. Smith, 143 Tex. 612, 187 S.W.2d 363 (1945).

In addition to dedication and claim of homestead by the head of a family additional acts and conditions required by the Texas law must be satisfied to establish a legally recognized homestead. See: 28 Tex.Jur.2d 360 et seq., Homesteads; 15-B Tex.Jur. 177-178, Domicile, Sec. 3.

Article VIII, Section 1-b of our State Constitution which provides for residence homestead exemptions reads as follows:

"Three Thousand Dollars (\$3,000) of the assessed taxable value of all residence homesteads as now defined by law shall be exempt from all taxation for all State purposes."

See also Art. 7048a, Sec. 2.

Article 7147 which states who is subject to ad valorem taxes on personal property in its pertinent portion reads as follows:

"Personal property, for the purposes of taxation, shall be construed to include all goods, chattels and effects, and all moneys, credits, bonds and other evidences of debt owned by citizens of this State, whether the same be in or out of the State;. . ." (Under-scoring added.)

For purposes of ad valorem taxes we believe that any person who is a legal "resident" or "inhabitant" of this State is also a "citizen" of this State within contemplation of Art. 7147.

"A review of the law pertaining to the residence of a soldier who is sent to Texas from another state under military orders properly begins with the case of Gallagher v. Gallagher, Tex.Civ.App., 214 S.W. 516, 518. It is there held that the words 'inhabitant,' 'citizen' and 'resident' mean substantially the same thing. In order to be an inhabitant one must acquire a domicile or home. . ." Wilson v. Wilson, 189 S.W.2d 212 (Civ.App. 1945).

See also: Cobbs v. Coleman, 14 Tex. 594 (1855); Stone v. Phillips, 142 Tex. 216, 176 S.W.2d 932 (1944).

S U M M A R Y

A member of the Armed Forces who claims a legally valid homestead exemption within Texas is a "citizen" of this state within contemplation of Article 7147 V.C.S., and all personal property as defined in this Article and owned by him, and not exempt from taxation by other provisions of Texas laws, is subject to ad valorem taxes.

Yours very truly,

WEA/cm

WILL WILSON
Attorney General of Texas

APPROVED:

By:

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