

OCTOBER 17, 1952.

HON. WALTER T. MARGETTS, JR.,
State Treasurer,
State House,
Trenton, N. J.

FORMAL OPINIONS—1952. No. 35.

DEAR SIR:

Receipt is acknowledged of your letter, dated September 30, 1952, wherein you advise that a question has arisen as to whether a veteran is entitled to an exemption under chapter 184, P. L. 1951, N. J. S. A. 54:4-3.12 i to u, on property in which he is in possession under a long-term lease. The two specific questions that you put to this office are:

1. Can the lessee, a veteran, claim exemption under the circumstances where no property is assessed against him?
2. Would the veteran-lessee be entitled to claim exemption in the event the assessor elects to levy the assessment for both land and improvements to him?

The aforementioned questions must be related to the facts submitted to me in your letter, and briefly they are: The owner of the legal title (fee) to unimproved property leases the same for a period of ninety-nine years, apparently without the right of renewal, but with the provision that the lessee shall have an exclusive option to purchase the property at a mutually agreed price. Under the terms of the lease, the lessee is to pay an annual rental in advance, as fixed in said lease, and, in addition thereto, the lessee assumes to pay the taxes and all other assessments which may be levied against the premises, this all being in addition to the rent as fixed by the terms of the lease. You further advise that it has been the practice of the assessor in the particular district wherein the property is located to assess the land and the improvements to the lessor.

We will now treat question No. 1. This office is of the opinion and we so advise you that, pursuant to chapter 184, P. L. 1951, unless the veteran "is owner of the legal title" to property on which exemption is claimed, he cannot maintain his status for said exemption. In the case of *Brown vs. Havens*, reported in 17 N. J. Super. 235, at page 238 (1952), the court used the following language relating to long-term estates:

"The pivotal point is the second step in plaintiff's argument, that the interest in the lands here involved is merely personalty within the purview of the foregoing cases. *An estate for years is a chattel real.* It is an estate in lands *but is less than freehold* and ordinarily falls in the category of personal property despite its relation to real property, and this is so for purposes of succession upon death. * * *" (Italics ours.)

In the case just referred to, the defendant urged, with considerable force, that the leasehold interest was tantamount to a fee. In answer to that, the court said on page 239:

"* * * In the first place, the instrument is a lease and nothing more * * *"

If we take the requirement of the statute which states that the owner of the property, when claiming exemption, must have "legal title", then, in law, we can assume that title means full, independent and fee ownership. The word "title" must denote, and it does denote, complete ownership in fee. See *In re Polis Estate*, 271 N. Y. Supp. 731, (1934), and see also *Smith vs. Bank of America National Trust and Savings Association*, 57 P. 2d 1363 (1936).

In the case of *United States vs. Hunter*, 21 Fed. 615, at page 617 (1884) the court said:

"* * * Sometimes the word 'title' is used in a general sense, so as to include any title or interest; but 'title' in common acceptance means the full and absolute title. We can speak of a man as having title to certain lands, the ordinary understanding is that he is the owner of the fee, *and not that he is a mere lessee.*" (Italics ours.)

Century Dictionary defines the word "title" as "ownership; absolute ownership; the unincumbered fee."

The Constitution of the State of New Jersey, Article VIII, section 1, paragraph 3, provides that:

"Any citizen and resident of this State now or hereafter honorably discharged or released under honorable circumstances from active service in time of war in any branch of the armed forces of the United States, shall be exempt from taxation on real and personal property to an aggregate assessed valuation not exceeding five hundred dollars * * *."

In 1951 the Legislature implemented the constitutional provision referred to hereinabove. Chapter 184, P. L. 1951 (N. J. S. A. 54:4-3.12 i to u) provides that a veteran making application for his exemption, shall establish that

"* * * he is the *owner of the legal title to the property* on which exemption is claimed." (Italics ours.)

In the case at hand, you advise us that the veteran does not own the property in fee, but is in possession by virtue of a ninety-nine year lease, and since our courts have held that a lease is an estate in lands less than a freehold, it falls in the category of personal property despite its relation to real property. Therefore, it is the opinion of this office that the veteran did not have legal title to the property by virtue of mere possession, and is not entitled to the benefits given to him by the New Jersey Constitution nor chapter 184, P. L. 1951.

Having answered question number 1 in the negative, I think we have disposed of the answer to question number 2, because it is our opinion that the right to exemption is not predicated upon the payment of taxes by the veteran, but upon the proposition in law that the veteran is owner of legal title to property on the critical taxing date.

Respectfully submitted,

THEODORE D. PARSONS,
Attorney General.

By: BENJAMIN M. TAUB,
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