

1946.

INHERITANCE TAX LAW—ROADS AND HIGHWAYS—WHEN ASSESSMENTS FOR ROAD IMPROVEMENT SHOULD BE TAKEN INTO CONSIDERATION IN FIXING VALUE OF SUCCESSIONS TO LAND FOR INHERITANCE TAX PURPOSES—SEE ALSO OPINION NO. 1863, DATED FEBRUARY 21, 1921.

Assessments for road improvements which are a charge upon the property of a decedent, but not a personal liability of his estate, are to be taken into consideration as encumbrances upon the land in valuing such land for inheritance tax purposes, in so far as they may affect the actual market value of the land itself.

COLUMBUS, OHIO, March 26, 1921.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This department is in receipt of the commission's recent letter acknowledging our opinion No. 1863, which holds that unpaid installments of county and state road assessments are not obligations of the general personal estate of a decedent who was the owner of the property assessed at the time the assessments were made, and requesting the further opinion of this department as to whether, and to what extent, such assessments should be taken into consideration in fixing the value for inheritance tax purposes of the successions to the land.

It was held in the opinion referred to that the assessments were a charge upon the land and would only become collectible from a person at the time the assessments were due and payable, in which event the person from whom collection should be made would be the person then the owner of the land.

In the opinion of this department, therefore, it follows that the lien of each assessment constitutes an encumbrance upon the property assessed, and, in so far as this encumbrance, in the judgment of the appraiser, will affect the actual market value of the land so encumbered, its existence must be taken into consideration in determining that value. The assessments, however, do not represent estates in or immediately enforceable charges against the land, and therefore are not to be treated as formal deductions at their present worth, except to the extent of the installments actually on the duplicate and in process of collection at the time of the decedent's death, yet not so far payable as to constitute a personal debt of his estate. In other words, it is for the appraiser to determine to what extent the assessment lien affects the actual market value of the land, and he is to do this by appraising the land as it is, rather than by appraising it, so to speak, without the assessments and then proceeding to deduct the present worth of the assessments as liens.

Respectfully,

JOHN G. PRICE,

Attorney-General.

1947.

STATE CIVIL SERVICE COMMISSION—CONTRACT SURVEYOR IN MEDICAL DEPARTMENT OF UNITED STATES ARMY ENTITLED TO EXEMPTION FROM PROVISIONS OF CIVIL SERVICE LAW (SECTION 486-10 G. C.).

One duly appointed as contract surgeon in the medical department of the United States Army and having rendered active service as such comes within the legal definition of a United States soldier, and upon filing a certificate of service and

honorable discharge with the civil service commission of Ohio is entitled to have his or her name placed upon an eligible list without examination under the provisions of section 486-10 G. C.

COLUMBUS, OHIO, March 26, 1921.

State Civil Service Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your recent communication, which reads, in part, as follows:

“The state civil service commission respectfully requests your opinion as to whether, under the provisions of section 486-10 of the civil service law, as amended, Dr. D. L. H., who served as a contract surgeon during the World War, is entitled to registration on the veterans’ eligible list.”

You also enclose copy of a letter written to your commission by Dr. D. L. H., wherein she makes application to have her name placed upon the eligible list without examination, which is as follows:

“I, D. L. H., M. D., at present employed at the Girls’ Industrial School as physician, on a provisional appointment, do hereby make application to be placed on the veterans’ eligible list for any position for which I am fitted on account of my military service.

I entered the military service as a contract surgeon on April 17, 1918. Was on duty at Mayo clinic for six weeks, and from there to Fort Des Moines as the anaesthetist for the surgical service. July 23rd was ordered to U. S. Army General Hospital No. 1, in New York City, for duty. On September 3rd sailed with anaesthetic unit No. 1, on the City of Marseilles, and arrived at G. H. I. Chaumont on September 22. On October 3rd attached to operating team No. 581, was on duty at A. R. C. Evacuation Hospital No. 110 and remained there through the Argonne drive. November 23rd team ordered to G. H. I. and on December 6th was on duty with Base 80 at Beaune, giving anaesthetics and assigned to laboratory. In February was ordered to 3rd Army Laboratory at Coblenz, Germany, for duty. Was released from duty on April 1st and arrived home May 29th. Contract was annulled June 2, 1919. My contract is at present at Washington, and if necessary I can have it sent to you. I will enclose some of my old orders that I have which may help to verify my report.”

Section 486-10 G. C., under the provisions of which your inquiry arises, and pertinent to consider herein, provides:

“All applicants for positions and places in the classified service shall be subject to examination which shall be public, competitive and free for all, within certain limitations, to be determined by the commission, as to citizenship, residence, age, sex, experience, health, habits and moral character; provided, however, that any soldier, sailor, marine or Red Cross nurse who has served in the army or navy or hospital service of the United States in the war of the Rebellion, the war with Spain, or the war with the Central Powers of Europe who has been honorably discharged therefrom and is a resident of Ohio, may file with the civil service commission a certificate of service and honorable discharge, whereupon his name shall be placed upon an eligible list by the commission, from which eligible list he may be appointed to any position in the civil service of the state which such appointing power may deem him qualified to fill. * * *”

It is at once apparent that the only issue presented, in view of the statement of facts and the section above quoted, is whether or not a contract surgeon, having performed active service in the United States army, may be regarded as a "soldier" within the meaning of said section. "Soldier" has been defined as follows: "A person engaged in military service." See Webster's Dictionary. Also see definition in Cyc. under this title.

However, before this question can be properly determined, consideration must be given to the provisions of the federal statutes authorizing the appointment of contract surgeons and establishing their status. The following sections of the U. S. Compiled Statutes are pertinent to consider in this connection:

"Sec. 1806. The medical department shall consist of one surgeon general, with the rank of major general during the active service of the present incumbent of that office, and thereafter with the rank of brigadier general, who shall be chief of said department, a medical corps, a medical reserve corps within the limit of time fixed by this act, a dental corps, a veterinary corps, an enlisted force, the nurse corps and contract surgeons as now authorized by law, the commissioned officers of which shall be citizens of the United States. (June 3, 1916, c. 134, Sec. 10, 39 Stat. 171.)"

"Sec. 1812. In emergencies the surgeon-general of the army, with the approval of the secretary of war, may appoint as many contract surgeons as may be necessary, at a compensation not to exceed one hundred and fifty dollars per month. (Feb. 2, 1901, c. 192, Sec. 18, 31 Stat. 752.)"

"Sec. 1813. When a contract surgeon is in charge of a hospital he shall have the same authority as a commissioned medical officer. (April 23, 1904, c. 1485, 33 Stat. 266.)"

In connection with the foregoing it has been noted that under the pension act of 1873, contract surgeons were authorized to be pensioned by the United States government when disabled in the line of duty. See sections 8933 and 8934, U. S. Compiled Statutes for 1918.

In view of the foregoing, the conclusion is that one who is properly appointed as a contract surgeon in the medical department of the United States army and has rendered actual service as such, is a person engaged in the military service of the United States and comes within the legal definition of a United States soldier. It therefore must follow that a contract surgeon, a resident of Ohio, duly employed and performing the services as disclosed in the statement of facts considered, has such a status as to be entitled to have her name placed upon an eligible list without examination, under the provisions of section 486-10 G. C., when she has filed with said commission "a certificate of service and honorable discharge" as required in said section. The filing of such certificate is a condition precedent to the action to be taken by the commission in placing said name upon the eligible list.

Respectfully,

JOHN G. PRICE,

Attorney-General.