

January 9, 1953
Opinion No. 53-1

RE: Cessation of Hostilities Effect
on Tax Exemptions Under Provisions
of Arizona Constitution

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There are five requirements with which an individual must comply in order to secure exemptions under Art. 9 Sec. 2 of the Arizona Constitution, as amended:

1. Individual must be a member of Army, Navy, United States Marine Corps, member of Revenue Marine Service, Nurses Corps, or a member of the components of auxiliaries of any thereof.
2. Individual must be honorably discharged from any of the services listed in 1 above.
3. Individual must be a resident of the State prior to September 1, 1945.
4. Individual's combined total property assessment must not exceed the sum of \$5,000.00.
5. Individual must have served at least sixty (60) days in the military or naval service of the United States during time of war (underscoring added).

Sub-paragraphs 1, 2, 3 and 4 are self-explanatory; the only requirement that merits discussion is sub-paragraph number 5. During the time of war is the phrase in need of clarification. A state of war between this country and any other country does not terminate in the absence of a formal treaty of peace and a proclamation by the President of the United States, or a joint resolution of Congress, proclaiming that a state of war no longer exists.

Bowles v. Soverinsky 65 Fed. Supp. 808. The U.S. District Court of Michigan in discussing the cessation of hostilities with Japan, citing cases states as follows:

"* * *In the absence of specific provisions to the contrary the period of war extends to the ratification of the treaty of peace or the proclamation of peace."

Citizens Protective League v. Byrnes, D.C.D.C., 64 F. Supp. 233, 234. The U.S. District Court of the District of Columbia, in supporting the above-stated proposition,

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citing cases states as follows:

"* * * A state of war still exists between the United States and the former so-called Axis countries, and it cannot be argued with any degree of probability that their unconditional surrender can be said to have changed the presently existing official status of this government in relation to them. We are still officially at war and the period of war has been held to extend to the ratification of the Treaty of Peace or the Proclamation of Peace."

For further authority in support of this proposition see:

U.S. ex rel. Bejeuhr v. Shaughnessy, C.A.N.Y. 177 F. 2d 436, 437.

Heye's Will, 91 N.Y.S. 2d 266, 270, 195 Misc. 1026.

Brown v. Bernstein, D.C. Pa., 49 F. Supp. 728, 732.

Samuels v. United Seaman Service, 68 Fed. Supp. 461.

U.S. ex rel. Schluter v. Watkins, 67 Fed. 556.

Michael Tuck Foundation v. Hazelcorn, 65 NYS 2d 387.

Stinson v. New York Life Insurance Co., 69 Fed. Sup. 860.

On the 24th day of October 1951, the President of the United States, Harry S. Truman, signed a proclamation which proclaimed that the state of war between the United States and the Government of Germany was terminated on the 19th day of October 1951. 50 U.S.C.A. Appen. Page XVIII, XIX.

On the 31st day of December 1946, the President of the United States, Harry S. Truman, proclaimed the cessation of hostilities of World War II. 50 U.S.C.A. Appen. Page XX.

Proclamation No. 2974 signed by the President of the United States on the 28th day of April 1952, 17 F.R. 3813 April 30, 1952 and also cited in the U.S. Code and Congressional Service Pamphlet 8 - 1952, at page 1716 thereof reads in part as follows:

"* * * WHEREAS the state of war between the United States of America and Japan, which was the last of the aforesaid states of war still existing, was terminated by the coming into force this day of the Treaty of Peace with Japan signed at San Francisco on September 8, 1951:

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NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do proclaim that the national emergencies declared to exist by the proclamations of September 8, 1939, and May 27, 1941, terminated the day upon the entry into force of the Treaty of Peace with Japan.

"* * *IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this twenty-eighth day of April in the year of our Lord nineteen hundred and fifty-two, and of the Independence of the United States of America the one hundred and seventy-sixth.

By the President:
Dean Acheson,
Secretary of State.

Harry S. Truman."

Therefore, if an individual has complied with the sub-paragraphs 1, 2, 3 and 4 and has served at least sixty (60) days in the military service prior to the 28th day of April 1952, as required by sub-paragraph 5 above, he or she is entitled to tax exemption under the above-cited article and section of the Arizona Constitution.

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