

## OFFICIAL OPINION NO. 4

January 20, 1945.

Hon. Otto C. Wulfman, Chairman,  
State Board of Tax Commissioners,  
State House,  
Indianapolis, 4, Indiana.

Dear Sir:

The letter of Honorable Charles H. Bedwell, the then chairman of the State Board of Tax Commissioners, has been received, requesting an official opinion on substantially the following facts:

An Indiana resident became a member of the armed forces of the United States in September, 1942, and was honorably discharged in February, 1944. At all of said times he was, and still is, the owner of real estate in Marion County, encumbered by school fund mortgage executed in 1938. At the time he entered the armed forces there were delinquent taxes existing against said real estate and delinquent taxes accrued. He now desires to make a settlement of his delinquent taxes, interest and penalties, but is confronted with the fact that settlement was not attempted within six months after he was discharged. From the first Monday of May, 1943, this man and his wife, who was with him, were away from Marion County and under the statute as it existed he had no opportunity to file a claim for mortgage exemption, as under said statute it was necessary a claim for mortgage exemption be filed by the mortgage debtor himself and could not be filed by someone else in his behalf.

Your specific questions as applied to the above facts are as follows:

"1. Under the facts above recited, would this particular party be entitled to have all penalties, demand fees and interest that accrued against his real estate during the period that he was in the armed forces of the United States of America and during the period of six months thereafter, deducted from the amount of delinquent tax, demand fees and interest that existed against such real estate at the date of settlement, where settlement is made subsequent to six months after the discharge of" (this veteran).

"2. Under the circumstances above recited, is" (this veteran) "now entitled to file a claim for mortgage exemption for the year 1943, and if so, when can the same be filed."

Each of these questions are controlled by the provisions of Chapter 2 of the First Special Session of the Indiana General Assembly in 1944. Section 5 of this statute is as follows:

"Sec. 5. That each person who has been, now is, or shall hereafter be a member of the armed forces of the United States of America, and receiving pay therefor from the United States Government, from the period beginning January 1, 1941, until twenty-four months after the termination of the present hostilities, or until six months after he shall be discharged if discharged prior thereto, is hereby declared to be exempted from all penalties, demand fees and interest for any taxes assessed or becoming a charge against such person or his property during said period of time, and any such penalties or interest are hereby expressly forgiven. Any official who has authority to assess or charge interest or penalties for non-payment or delinquency of taxes shall strike the same from his records upon his own personal knowledge of the service with the armed forces of the person hereby exempted, or upon evidence of such service as is provided for by Section 3 of this act. No sale shall be made of the property of any member of the armed forces as defined by this section for any failure to pay any of his real or personal property taxes becoming due during the period of his military service. Provided: That the exemptions provided by this section shall not be applicable if the total assessed valuation of all property both real and personal of such person exceeds the total sum of \$20,000."

Under the above section of the statute, in answer to your first question, it is my opinion this veteran is entitled to an exemption from all penalties, demand fees and interest for any taxes assessed or becoming a charge against his person or property from the time he entered the service until six months

after he was honorably discharged from the service, providing the value of the real and personal property of such veteran did not exceed \$20,000.00. This is clearly provided for by the above statute.

As the Congress of the United States and the General Assembly of Indiana have each passed said laws granting relief to members of the armed forces, it is my opinion by which-ever provisions of said statutes of the most benefit to such member of said armed forces, whether passed by Congress or the Indiana General Assembly, controlled in each particular case.

Under the Soldiers, etc. Civil Relief Act of 1940, being Sec. 500, Chapter 888, Act of October 17, 1940, as amended, same being Sec. 560 of the Title 50, App. U. S. C. A., Congress has provided for the relief of such members of the armed forces as follows:

“(1) The provision of this section shall apply when any taxes or assessments, whether general or special (other than taxes on income), whether falling due prior to or during the period of military service, in respect of personal property, money, or credits, or real property owned and occupied for dwelling, professional, business, or agricultural purposes by a person in military service of his dependents at the commencement of his period of military service and still so occupied by his dependents or employees are not paid.

“(2) No sale of such property shall be made to enforce the collection of such tax or assessment, or any proceeding or action for such purpose commenced, except upon leave of court granted upon application made therefor by the collector of taxes or other officer whose duty it is to enforce the collection of taxes or assessments. The court thereupon, unless in its opinion the ability of the person in military service to pay such taxes or assessments is not materially affected by reason of such service, may stay such proceedings or such sale, as provided in this Act, for a period extending not more than six months after the termination of the period of military service of such person.

“(3) When by law such property may be sold or forfeited to enforce the collection of such tax or assess-

ment, such person in military service shall have the right to redeem or commence an action to redeem such property, at any time not later than six months after the termination of such service, but in no case later than six months after the date when this Act ceases to be in force; but this shall not be taken to shorten any period, now or hereafter provided by the laws of any State or Territory for such redemption.

“(4) Whenever any tax or assessment shall not be paid when due, such tax or assessment due and unpaid shall bear interest until paid at the rate of 6 per centum per annum, and no other penalty or interest shall be incurred by reason of such nonpayment. Any lien for such unpaid taxes or assessment shall also include such interest thereon.”

In answer to your first question, I wish further to state that if the real and personal property so owned by this veteran exceeded the sum of \$20,000.00, the only charges that could be made would be the 6% interest charge permitted under the above Federal statute.

Section 6 $\frac{1}{2}$  of the above Indiana statute provides as follows:

“That each person who has been, now is, or shall hereafter be a member of the armed forces of the United States under the provisions of this act, and a widow of any such person, who has a bona fide mortgage indebtedness existing upon his or her real estate as of March 1 of any calendar year shall be entitled to a mortgage exemption as now provided by law. Any person entitled to such exemption shall between March 1 and the first Monday of May inclusive of each year file with the county auditor wherein his or her real estate is situated a sworn statement signed by himself or by some relative in his behalf that he or she is entitled to claim the benefit of the provisions of this section.”

Prior to the enactment of the last mentioned section of the statute the filing for mortgage exemptions was controlled by Section 64-210, Burns' 1943 Supplement, same being Section

58, Chapter 59, Acts 1919, as amended, which provides as follows:

“\* \* \* The authority for signing the application for mortgage deduction shall not be delegated, by the owner, to any other person except upon duly executed and recorded power of attorney.”

Under the last mentioned section of the Indiana statute it is clear the only person who could file for a mortgage exemption was the owner of the property or some person to whom authority therefor had been delegated by duly executed and recorded power of attorney. Section 61½ of Chapter 2 of the First Special Session of the Indiana General Assembly, 1944, *supra*, merely provided that a mortgage exemption for a member of the armed forces of the United States could be filed by the owner himself, his widow, “or by some relative in his behalf.” The statute cannot be construed to be retroactive to the year 1943 and does not relieve the veteran, or some other designated person in his behalf, from filing for such mortgage exemption between March 1st and the first Monday in May, inclusive, of each year. I do not find any provision in the Federal Act regarding the filing of such mortgage exemptions.

In answer to your second question I am, therefore, of the opinion this veteran is not entitled to a mortgage exemption for the year 1943 under the facts stated in your letter, due to the fact he did not file a mortgage exemption between March 1, 1943, and the first Monday of May, 1943, as required by Section 64-210, Burns' 1943 Supplement, *supra*.

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OFFICIAL OPINION NO. 5

January 24, 1945.

Hon. Ralph F. Gates, Governor,  
State of Indiana,  
State House,  
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of January 11, in which you state: