Mr. William F. O'Neill, Director  
Department of Veterans' Affairs  
707 State Office Building  
Indianapolis, Indiana  

Dear Mr. O'Neill:

This is in response to your letter of August 11, 1964, wherein you request my Official Opinion with regard to the following questions:

"1. Is a widow entitled to tax exemption if her husband's service-connected disability is established by the Veterans' Administration after his death and made retroactive to a date prior to his death?

"2. Is a widow whose husband's service-connected disability was established after his death and made retroactive to the date of her claim entitled to the $2000 tax exemption?"

The Acts of 1941, Ch. 95, Sec. 1, as amended by the Acts of 1947, Ch. 352, Sec. 1, as found in Burns’ (1961 Repl.), Section 64-221, reads as follows:

"Any person who shall have served in the military or naval forces of the United States during any of its wars, and who shall have been honorably discharged therefrom, and who is disabled with a service-connected disability of ten per cent [10%] or more, as evidenced by a letter or certificate from the veterans' administration, or its successor, and the widow of any such person who shall have served in the military or naval forces of the United States during any of its wars, shall have the amount of two thousand dollars [$2,000] deducted from his or her taxable property: Provided, That this said exemption shall not bar recipient thereof from receiving benefits from any other exemption, or exemptions which he or she may be entitled to under the laws of the state of Indiana." (Our emphasis)
In construing statutory enactments, it is to be remembered that the fundamental rule in the construction of Indiana statutes is to ascertain the intent of the Legislature as therein expressed.

Roth v. Local Union No. 1460 of Retail Clerks Union et al. (1939), 216 Ind. 363, 24 N. E. (2d) 280;

State ex rel. Clemens v. Kern et al. (1939), 215 Ind. 515, 20 N. E. (2d) 514;

State of Indiana v. Mears (1938), 213 Ind. 257, 12 N. E. (2d) 343.

Furthermore, as was stated by the Indiana Supreme Court in the case of Orr v. Baker (1853), 4 Ind. 86, 88:

"The true theory of taxation is to assess all property protected by the law, in proportion to its actual value * * * The tax from which one class of persons is exempt, is thrown as an additional burden on the other classes. To say that such is the practice of civilized nations, is not sound. It is rather an apology for a departure from principle. Under our institutions, there is no good reason why one species of property, or one class of persons, should be exempt from the common burdens which, for the common good, all ought equally to bear. Hence these exemptions, as they are contrary to common right, are not to be favored by the courts. They should be confined to the specified objects, and to such as by reasonable intendment the legislature must have had in contemplation. In short, the statute which exempts persons or property from taxation, is to be construed strictly." (Our emphasis)

See also:

United Brethern Publishing Establishment v. Shaffer, Treasurer of Huntington County, et al. (1920), 74 Ind. App. 178, 181, 182, 123 N. E. 697;

The Common Council of Indianapolis and Another v. McLean (1856), 8 Ind. 328, 331;

The City of Madison and Others v. Fitch and Others (1862), 18 Ind. 33, 34.

It is, therefore, to be noted that as to a deduction granted a veteran, himself, such is granted to a veteran who "is disabled with a service-connected disability of ten per cent (10%) or more * * *" (Our emphasis) It should also be noted that the verb "is" was substituted for the verb "was" by the Acts of 1947, Ch. 352, Sec. 1. Thus, the Legislature apparently intended to grant this exemption from taxation to veterans who, at the time of their annual property assessment, are disabled with a ten per cent or more service-connected disability. A subsequent recovery from such disability would apparently terminate any tax exemption previously granted pursuant to Burns' 64-221, supra.

As to the tax relief provided by the statute for the widow of "such" veteran, the point of inquiry, as presented by both of your questions, is the effect of the establishment of a service-connected disability by a veteran's widow subsequent to such veteran's death as related to the deduction provided a widow under Burns' 64-221, supra. I have contacted a representative of your office and such person informs me that although Veterans' Administration benefits are, at times, made retroactive to a date prior to the veteran's death and at other times are made retroactive only to the date of a widow's claim for such benefits, yet in either case the Veterans' Administration finds, as a matter of fact, that such service-connected disability did exist as of the date of the veteran's death.

In answer to your first question, therefore, please be advised that it is my opinion that the widow of a person who had served in the military or naval forces of the United States during any of its wars and was honorably discharged therefrom is, pursuant to Burns' 64-221, supra, entitled to a two thousand dollar deduction from her taxable property—provided that at the time of her husband's death he was, in fact, disabled with a service-connected disability of ten per cent or more. That the "fact" of his service-connected disability as of the time of his death is established only subsequent to his death would not deprive the widow of the deduction pro-
vided her under Burns' 64-221, supra. Such widow would, of course, yet have the burden of establishing proof of her claim as discussed below.

In answer to your second question, please be advised that my prior conclusion, in respect to your first question, is also applicable in response to this question. Again, for the purpose of determining whether the widow of a veteran would be entitled to the deduction provided for by Burns' 64-221, supra, the inquiry would be directed to the condition of the veteran as of the date of his death. If, as a matter of fact, the veteran himself would have qualified for the benefits provided by Burns' 64-221, supra, as of the date of his death, the subsequent determination of his condition by the Veterans' Administration and the granting of Veterans' Administration benefits retroactive only to the date of the widow's claim therefor would not deter from the fact that, as of the date of his death, he could have qualified for the benefits provided by Burns' 64-221, supra. Here, again, the widow yet has the burden of establishing proof of her claim.

As to the establishment of a claim for a deduction pursuant to Burns' 64-221, supra, the Acts of 1941, Ch. 95, Sec. 2, as amended, as found in Burns' (1961 Repl.), Section 64-222, reads as follows:

"Any person desiring to avail himself or herself of the provisions of this act, shall, between the first day of March and the first Monday in May, inclusive, of each year, file with the county auditor of the county wherein he or she is resident, a sworn statement that he or she is entitled to the provisions of this act. At the same time, the applicant for this exemption shall submit for the county auditor's inspection his or her letter, or certificate or check for disability compensation from the veterans' administration or its successor: Provided, That in case any person entitled to the benefits of this act shall be under guardianship, the guardian shall file such sworn statements as herein provided."