OPINION 16

OFFICIAL OPINION NO. 16

April 19, 1961

Mr. William F. O'Neal, Director
Veterans' State Service Department
707 Indiana State Office Building
Indianapolis 4, Indiana

Dear Mr. O'Neal:

This is in response to your request of April 4, 1961, for my Official Opinion in answer to the following two questions:

> "(1) Is a disabled veteran who owned property in the State of Indiana, but who resides outside the State of Indiana entitled to file and receive tax exemptions in the State of Indiana?
>
> "(2) Can a veteran who resides in Indiana apply for and receive tax exemption in a county other than a county where he resides?"

There are two statutes providing for deductions from the assessed valuation of property based upon ownership by disabled veterans. The first is the Acts of 1927, Ch. 175, as amended, as found in Burns' Indiana Statutes (1951 Repl.), Sections 64-205, 64-206 and 64-207, which provides for such a deduction for a totally disabled soldier, sailor, marine (including the widow of same) or nurse who shall have served ninety days or more in the military or naval forces of the United States, who has been honorably discharged, and whose taxable property, as shown by the tax duplicate, does not exceed the assessed valuation of $5,000.

The second such statute is the Acts of 1941, Ch. 95, as amended, as found in Burns' Indiana Statutes (1951 Repl.), Sections 64-223, 64-224 and 64-225, by which persons (including the widow of same) with a service-connected disability of ten per cent or more may be entitled to the deduction therein provided, if they have served in the military or naval forces of the United States during any of its wars and have been honorably discharged therefrom. The 1941 statute expressly provides that the "exemption" thereby granted shall not bar a recipient thereof from receiving the benefits for which he may otherwise be eligible pursuant to any other law

of the State of Indiana. As a consequence of such provision, the Attorney General has heretofore held in 1941 O. A. G., page 73 and in 1945 O. A. G., page 323, No. 80 that a person may be entitled to both of the tax deductions provided by these statutes if he meets the requirements of both statutes.

Both the 1927 statute and the 1941 statute are comprised of three sections (exclusive of sections providing only for repeal or effective date), Section 1 of each providing for the eligibility requirements in order for a person to be qualified to claim and receive the deduction provided by the act, Section 2 of each of said acts providing for the procedure required for an eligible person to avail himself of the deduction provisions, and Section 3 of each of the acts providing criminal penalties for false affidavits filed in an attempt to derive benefits of either of the acts by a person not entitled thereto.

The eligibility requirements of the 1927 Act are as stated in the Acts of 1927, Ch. 175, Sec. 1, as found in Burns' (1951 Repl.), Section 64-205, which provides as follows:

> "Any honorably discharged soldier, sailor, marine or nurse who shall have served ninety [90] days or more in the military or naval forces of the United States, and who is totally disabled as evidenced by pension certificate or the award of compensation and the widow of any such soldier, sailor or marine, may have the amount of one thousand dollars [$1,000] deducted from his or her taxable property, providing the amount of taxable property as shown by the tax duplicate shall not exceed the amount of five thousand dollars [$5,000], and the amount remaining after such deduction shall have been made shall constitute the basis for assessment and taxation: Provided, further, That the age of sixty-two [62] shall constitute the basis of total disability for any pensioner."

The eligibility requirements provided by the 1941 Act are contained within the Acts of 1941, Ch. 95, Sec. 1, as last amended by the Acts of 1947, Ch. 352, Sec. 1, as found in Burns' (1951 Repl.), Section 64-223, which provides 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 [10] per cent 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."

(Prior to the 1947 amendment the deduction authorized by this section was $1,000.) An examination of Section 1 of each of the acts as above-quoted discloses that neither act is limited in its application to any county of the state, nor is it limited in its application only to such persons as are residents of the county in which the taxable property is situated for which a deduction is claimed, nor is it limited only to such persons as are residents of the State of Indiana. It should be noted, moreover, that a statute which withholds a tax exemption or tax deduction solely on the basis of nonresidence may as to such requirement be unconstitutional. Nevertheless, there are other statutes of such character, as for instance, the Acts of 1943, Ch. 254, Sec. 1, as found in Burns' (1951 Repl.), Section 59-1007a, which restricts "rights and privileges" therein granted to those "who are residents of the State of Indiana." The statutes now under consideration are not of such character.

The procedure for securing the deduction provided by the 1927 Act is as provided by the Acts of 1927, Ch. 175, Sec. 2, as last amended by the Acts of 1947, Ch. 62, Sec. 1, as found in Burns' (1951 Repl.), Section 64-206, which provides as follows:

> "Any person desiring to avail himself or herself of the provisions of this act [§§ 64-205—64-207], 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 a resident, a

> sworn statement that he or she is entitled to the provisions of this act and as further evidence of identification, submit for the county auditor's inspection either his or her pension certificate, the award of compensation or a check from the Veterans' Administration for disability compensation: 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."

The procedure for securing the deduction provided by the 1941 statute is found in the Acts of 1941, Ch. 95, Sec. 2, as last amended by the Acts of 1947, Ch. 63, Sec. 1, as found in Burns' (1951 Repl.), Section 64-224, which provides as follows:

> "Any person desiring to avail himself or herself of the provisions of this act [§§ 64-223—64-225], 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."

In neither of these sections providing the procedural requirements is it required that the applicant be a resident of the county in which the taxable property is situated or that he be a resident of the State of Indiana, but rather that application shall be filed with the county auditor of the county wherein he or she is a resident. This presupposes that usually the applicant will be a resident of Indiana and also a resident of the county in which the taxable property is situated for which the deduction is claimed. However, neither Burns' 64-206, *supra,* nor Burns' 64-224, *supra,* requires the applicant to swear to the fact that he is a resident of the county in which

the taxable property is situated for which the deduction is claimed, nor to swear to the fact that he is a resident of Indiana. To the contrary, he must make a sworn statement "that he or she is entitled to the provisions of this act."

It is important to note that Section 1 of each of the acts involved is clearly a section defining the class of persons who are entitled to such a deduction if they make such a claim. In neither Section 1 of the 1927 statute, Burns' 64-205, *supra,* nor in Section 1 of the 1941 statute, Burns' 64-223, *supra,* is there any semblance of a residence requirement of any kind. Certainly there is none that the applicant must be a resident of the county in which the taxable property is situated for which a deduction is claimed, and it is equally certain that there is no requirement that the person be a resident of the State of Indiana.

Your attention is invited particularly to 1948 O. A. G., page 223, No. 39, at page 225 which specifically answers your second question, stating:

> "I am, therefore, of the opinion that the exemption allowed in Chapter 352 of the Acts of 1947 may be claimed against property owned in a county other than a county in which the disabled veteran, claiming the exemption, resides. * * *"

The basis for the 1948 Opinion of the Attorney General is that Section 2 of the 1941 statute relates solely to procedure and not to defining the class of persons who may become eligible for the deduction. This is emphasized by the Attorney General's Opinion in 1948 wherein it is stated (p. 224) as follows:

> "It will be noted that the exemption granted by Chapter 352 is not limited in its application to any county of the State but provides in mandatory language that those eligible shall have $2,000 deducted from their taxable property. *Chapter 63 merely provides the method or mechanics by which this is to be accomplished* by requiring the filing of a sworn statement with the County Auditor of the county wherein the disabled veteran resides and the presentation to him of the letter, certificate or check from the Veterans'

> Administration as a condition precedent to the claim of exemption. *This paragraph concerns the procedure for obtaining the exemption and not the substantive right to the exemption.* * * *" (Our emphasis)

The reasoning of the Attorney General above-quoted is applicable to Section 2 of both the 1927 Act as well as the 1941 Act, as amended, that section of each providing merely the normal procedure for obtaining the deduction. However, the determination as to who is eligible to file such a claim for deduction is made to depend upon Section 1 of each of the statutes.

Therefore, 1948 O. A. G., page 223, No. 39, in practical effect, answers both of your queries in the affirmative and there can be no doubt that it answers your second question specifically in the affirmative.

In conclusion, therefore, for answer to your first question, it is my opinion that a disabled veteran who owns property in the State of Indiana, but who resides outside of the State of Indiana, is entitled to receive the tax deductions provided by the said 1927 and/or 1941 statutes, as amended, if he meets the eligibility requirements of Burns' 64-205, *supra,* and/or Burns' 64-223, *supra.* In such a situation, the application should be filed with the auditor in the county in which is located the taxable property for which the tax deduction is claimed.

Although the foregoing statement concerning the county in which the application of a nonresident disabled veteran should be filed does not constitute technical adherence to the provisions of Burns' 64-206 and 64-224, *supra,* such strict compliance is warranted only if such requirement is mandatory. Your attention is invited to Sutherland, Statutory Construction, 3rd Ed., Vol. 3, Sec. 5806, quoting from the case of Miller v. Lakewood Housing Co. (1932), 125 Ohio St. 152, 180 N. E. 700, 81 A. L. R. 1239, wherein it is stated:

> "* * * 'Whether a statutory requirement is mandatory or directory depends on its effect. If no substantial rights depend on it and no injury can result from ignoring it, and the purpose of the legislature can be accomplished in a manner other than that prescribed

> and substantially the same results obtained, then the statute will generally be regarded as directory; but, if not, it will be mandatory.' * * *"

This distinction between mandatory and directory requirements is recognized in Indiana as shown by Risley, Auditor v. Rumble (1924), 81 Ind. App. 573, 584, 144 N. E. 568, wherein it is stated:

> "There is a general rule founded on sound reason and principle which requires that when construing a tax law all those provisions which are intended to secure methodical procedure shall be regarded as merely directory, and that only those provisions which are necessary to the protection of the citizen shall be regarded as mandatory. Sutherland, Statutory Construction § 455; *Sibley* v. *Smith* (1853), 2 Mich. 487; *Clark* v. *Crane* (1858), 5 Mich. 151, 71 Am. Dec. 776; *Torrey* v. *Millbury* (1838), 21 Pick. (Mass.) 64; *Millikan* v. *Crail* (1912), 177 Ind. 426."

As heretofore noted, 1948 O. A. G. No. 39, *supra,* concludes that Sections 2 of the 1927 and 1941 Acts here under consideration do not concern the substantive right to the deduction provided by Section 1 of each of said acts. If the provision for filing such application in the county wherein the applicant is a resident were mandatory, in that event, Section 2 of each of these acts would concern the substantive right to such deductions. However, the said Attorney General's Opinion in 1948 expressly holds that such provision concerns only procedure and stated the justification for such procedure as being for the benefit of the applicant disabled veteran on the following basis: (p. 225)

> "* * * It may possibly be that the General Assembly did not think it was necessary to risk the loss of the Veterans' Administration's letter of certificate or disability check by sending it to the Auditor of counties other than that of the veteran's residence."

The procedure set forth in Section 2 of each of these acts should, therefore, be considered as intended to secure a methodical procedure in the usual instances, being merely direc-

tory and not to be regarded as mandatory. As noted in the 1948 Opinion, so that claims may not be made in more than one county, the "County Auditor where the exemption is claimed may make reasonable requirements to insure against allowance of more exemption than the statute authorizes," such as requiring sworn statements that these deductions are not being applied for in any other county or notifying other county auditors of the filing for such deductions.

Likewise, I need merely to state that your second question has been answered specifically by 1948 O. A. G. No. 39, *supra,* to the effect that a veteran who resides in Indiana may apply for and receive a tax deduction in a county other than the county wherein he resides if he is otherwise eligible for one or both of such deductions by complying with the requirements of Burns' 64-205, *supra,* and/or Burns' 64-223, *supra.*

OFFICIAL OPINION NO. 17

April 20, 1961

Col. John J. Barton, Superintendent
Indiana State Police
301 Indiana State Office Building
Indianapolis 4, Indiana

Dear Colonel Barton:

You have requested my Official Opinion on the following questions:

> "1. When a resident of Indiana is arrested for a violation of the Motor Vehicle Act punishable as a misdemeanor and such person is not taken immediately before a magistrate as provided in Acts 1939, ch. 48, § 163, p. 289, the same being Burns (1952 Repl.) § 47-2307, is the procedure prescribed in Acts 1939, ch. 48, § 164, p. 289, the same being Burns' (1952 Repl.) § 47-2308 *mandatory*—or is the issuance of a notice to appear ticket (in lieu of detention until hearing) rendered *discretionary* to the arresting officer by the language of Acts 1939, ch. 48, § 166, p. 289, as amended by Acts 1951, ch. 221, § 1, p. 637, the same being Burns