

631030.1

**TAXATION: Act 148, P.A. 1963.
PROPERTY EXEMPTION.
VETERANS' HOMESTEAD EXEMPTIONS.**

1. The word "serviceman" as used in subdivision (i) of subsection Eleventh of Section 7 of the General Property Tax Law means one who performs or has performed military service as otherwise defined in subsection Eleventh.
2. The phrase "taxable property" as used in the aforesaid subdivision (i) refers to tangible property subject to taxation under the General Property Tax Law of the State, including that exempted by the aforesaid subsection Eleventh, but not including stock of a corporation.
3. The phrase "calendar year" as used in said subdivision (i) refers to the calendar year in which the tax day falls, and not to the ensuing tax year.
4. The phrase "to the value of \$2,000.00" as used in subsection Eleventh refers to the state equalized value of taxable property.
5. The \$7,500 income limitation in the aforesaid subdivision (i) has no application to a serviceman or his widow who is receiving service-connected disability payments from the Veterans' Administration or the Armed Forces of the United States.
6. The provisions of Act 148, P.A. 1963, become effective for taxes which will be due and payable based on the status of property and persons as of the tax day December 31, 1963, and therefore do not affect the taxes due and payable on December 1, 1963.

No. 4183

October 30, 1963.

Hon. Billie S. Farnum, Auditor General
Hon. William H. Thorne, State Representative
Hon. Edwin A. FitzPatrick, State Representative
State Capitol
Lansing, Michigan

Each of you has requested an opinion of the Attorney General on different questions concerning Act 148 of the Public Acts of 1963, which amends subsection Eleventh of Section 7 of the General Property Tax Law¹ in respect to veterans' homestead exemptions.

Act 148 amends subdivisions (i) and (k) of subsection Eleventh as follows (the language added by Act 148 is reproduced in capital letters and the language deleted therefrom is stricken through):

"(i) If homestead as defined in this eleventh subdivision shall exceed in value the sum of \$2,000.00, it shall be exempt only to the amount of such sum.

"The exemptions set forth in this eleventh subdivision shall not operate to relieve from taxation any person who is the owner of taxable property, both real and personal, of greater value than \$7,500.00. ~~For any year previous to 1945 such exemption shall not~~

¹ Act 206, P.A. 1893, as amended [C.L.S. § 211.7; M.S.A. '61 Cum. Supp. § 7.7].

~~operate to relieve from taxation any person who was the owner of taxable property, both real and personal, of greater value than \$5,000.00 for such year \$10,000.00 STATE EQUALIZED VALUATION.~~

“ANY PERSON MAKING APPLICATION FOR EXEMPTION UNDER THIS SUBDIVISION 11 SHALL NOT BE IN RECEIPT OF AN INCOME IN EXCESS OF \$7,500.00 PER CALENDAR YEAR UNLESS SUCH SERVICEMAN OR WIDOW OF SUCH EX-SERVICEMAN IS IN RECEIPT OF COMPENSATION PAID BY THE VETERANS ADMINISTRATION OR THE ARMED FORCES OF THE UNITED STATES FOR SERVICE INCURRED DISABILITIES.

“(j) * * *

“(k) * * *

“The term ‘to the value of’ as used in this eleventh subdivision shall be construed to mean ~~the assessed valuation as determined by the supervisor or assessing officer as changed; endorsed or certified by the local board of review, or state tax commission on appeal~~ THAT VALUE WHICH IS FIXED ACCORDING TO STATE EQUALIZATION.”

In reference to these statutory changes, you ask the following questions:

1. What is the meaning of the word “serviceman” as used in the amendment to subdivision (i) of subsection Eleventh of Section 7 of the General Property Tax Law?
2. Does the reference to taxable real and personal property in subdivision (i) apply to both tangible and intangible property, including interest in a corporation?
3. Does the phrase “calendar year” as used in subdivision (i) apply to the calendar year in which exemption is requested or to year preceding?
4. Does the term “to the value of” as used in subdivision (k) of subsection Eleventh supersede Opinion No. 4107, as modified by Opinion No. 4107A, thus requiring the value of taxable property, for veterans’ homestead exemption purposes, to be the state equalized value, rather than the local assessed value, as approved or corrected by the local board of review?
5. Is the exemption figure of \$2,000 set forth in subdivision (i) of subsection Eleventh the value as determined by reference to local assessed valuation for both local exemption and state reimbursement purposes, or does it refer to the value as determined by state equalization?
6. What does the \$7,500 income limitation figure in the amendment to subdivision (i) of subsection Eleventh refer to in light of the following phrase: “* * * unless such serviceman or widow of such ex-serviceman is in receipt of compensation paid by the veterans administration or the armed forces of the United States for service incurred disabilities”?
7. Does the provisions of Act 148, P.A. 1963, become effective for taxes which will be due December 1, 1963?

We will consider these questions in the above listed order. However, before considering answers to your specific inquiries it is noted that the legislative language here involved contains some ambiguity. Therefore, it is necessary to resolve your inquiries by reference to the proper rules of statutory construction, bearing in mind that the cardinal rule of construction is to ascertain and give effect to the legislative intent.

In interpreting statutory language, various provisions of a statute are to be construed together to produce a consistent and harmonious whole, and the real intent of the legislature will always prevail over the literal meaning of terms employed. If possible, statutes should also be construed to produce a constitutional result.

Green v. Graves, (1844) 1 Doug. 351, 352.

Some of the rules of construction are stated as follows in *Green v. Graves*, *supra*, at pp. 354-355:

“* * * 1. The words of a statute are to be taken in their ordinary signification and import. 2. The real intention, when accurately ascertained, will always prevail over the literal sense of terms: 1 *Kent's Com.*, 462; *Dwarris on St.*, 40. 3. The reason and intention of the lawgiver will control the strict letter of the law, when the latter would lead to palpable injustice, contradiction or absurdity. 4. When the words are not explicit, the intention is to be collected from the occasion and necessity of the law, from the mischief felt, and the remedy in view; and the intention is to be taken or presumed according to what is consonant to reason and good discretion. 5 The cause or reason of the act may either be collected from the statute itself, or discovered from circumstances extrinsic of the act: *Dwarris on St.*, 44. 6. The construction to be put upon the act must be such as is warranted by, or at least not repugnant to, the words of the act; and where the object of the legislature is plain and unequivocal, courts ought to adopt such a construction as will best effectuate the intentions of the lawgiver; but they must not, in order to give effect to what they suppose to be the intention of the legislature, put upon the provisions of a statute a construction not supported by the words, though the consequence should be to defeat the object of the act.”

See, *inter alia*

Grand Rapids Motor Coach Co. v. Public Service Commission, 323 Mich. 624

Mason County Civic Research Council v. Mason County, 343 Mich. 313

The answer to your inquiries turns upon proper application of these rules of construction of the statutory language here involved.

As to Question 1 — the meaning of the word “serviceman”:

The word “serviceman” is not defined in the General Property Tax Law and is used only in subdivision (i) of subsection Eleventh, as amended by Act 148. It is used there in connection with the qualifying word “such” and in the same context as the phrase “such ex-serviceman”. Throughout subsection Eleventh the phrase “soldier or sailor” is used to designate a

person entitled to the veterans' homestead exemption. Subdivision (k) defines the phrase "soldier or sailor" as follows:

"The words 'soldier or sailor', and pronouns referring to them, as used in this eleventh subdivision shall apply to persons of either sex and shall include any person serving in the armed forces of the United States, who was a resident of this state at the time of his entry into the armed forces and had been such a resident for at least 6 months prior to such entry, or who has been a resident of this state for 5 years prior to his application for exemption."

While only specific reference is made in the definition of "soldier or sailor" to a person serving in the armed forces, this term is used in the various subdivisions of subparagraph Eleventh, wherein specific exemptions are granted, with reference to persons discharged from active duty, as well as to those still on active duty. These specific provisions are geared to exempt those persons who have rendered military service during a particular period of time, irrespective of whether or not they have been discharged from active military service.

It is clear that the word "serviceman" contained in subdivision (i) was intended to apply in the same manner as the words "soldier or sailor" defined in subdivision (k).

Thus, it is reasonable to conclude that the legislature intended that the phrase "such serviceman" mean any person who has been discharged from active military service, as well as any person still on active duty. This interpretation of the language employed not only carries out the obvious intent of the legislature, but is consistent with the language employed by the legislature.

Webster's New Collegiate Dictionary (2d Ed.)² defines "serviceman" as one who performs or has performed military service. This definition was considered by the Supreme Court of the United States in

Mitchel et al. v. Cohen, 333 U.S. 411, 417.

As to Question 2 — the meaning of the phrase "taxable property, both real and personal":

Concerning this question, you make specific reference to the securing of affidavits as to "personal property of a corporate nature" owned by the veteran making application for exemption. Inasmuch as an individual ownership in corporate property is intangible stock and not the physical property of the corporation,³ the question is whether or not the phrase "taxable property, both real and personal" includes intangible property. Former Attorneys General have given their opinion that the phrase "taxable property", used in conjunction with the veterans' homestead exemption, refers to property subject to ad valorem taxation under the general tax law. 1911 O.A.G., p. 317, dated May 18, 1911; 1912 O.A.G., p. 257, dated Feb. 8, 1912; 1912 O.A.G., p. 343, dated Mar. 27, 1912; 1945-46 O.A.G. No. O-3593, p. 364, dated June

² Based on *Webster's New International Dictionary* (2d Ed.), G. & C. Merriam Co.

³ *Kowal v. Sang Corp.*, 318 Mich. 312; *Mahlen Land Corp. v. Kurtz*, 355 Mich. 340; *M.L.P.*, Corporate Property and Funds, § 124, p. 122; and 18 *C.J.S.*, Corporations, § 512, p. 1189.

4, 1945; and 1945-46 O.A.G. No. O-4663, p. 694, dated May 10, 1946.⁴ This is in accord with the judicial interpretation of this language.

Attorney General v. Supervisors, 71 Mich. 16, 20

Hanson et al. v. City of Omaha et al., 154 Neb. 72; 46 N.W. 2d 896, 899

State ex. rel. Harrington v. City of Pompano, 136 Fla. 730; 188 So. 610, 625

Pullman Car & Mfg. Corp. v. Hamilton, 229 Ala. 184; 155 So. 616.⁵

Intangible personal property is not a subject of taxation under the General Property Tax Law, but is exempted specifically by subsection (e) of Section 2 of the Michigan Intangibles Tax Act.⁶

Therefore, please be advised that the phrase "taxable property" as used in subdivision (i) of subsection Eleventh of Section 7 of the General Property Tax Law refers to tangible real and personal property subject to tax under the provisions of the General Property Tax Law, including property taxable were it not for the partial relief provisions in subsection Eleventh of Section 7. It would not include stock of a corporation.

As to Question 3 — the meaning of the phrase "calendar year" in subdivision (i).

By amending subdivision (i) by Act 148, P.A. 1963, the legislature placed an income limitation upon the determination of the eligibility of a serviceman for the exemption provided in subsection Eleventh. While the legislature has not specified that the \$7,500.00 per-calendar-year income limitation shall pertain to any particular calendar year, it is only logical that this limitation be related to the date of determination of the taxable status of property. December 31 was fixed as tax day by Act 209, P.A. 1958. Section 2 of the General Property Tax Law provides that the taxable status of persons and real property shall be determined as of tax day.⁷ Section 13 of the General Property Tax Law provides that the taxable status of persons and personal property shall be determined as of tax day.⁸ This is the date that is controlling for the \$10,000.00 taxable property limitation contained in subdivision (i). It would be illogical to have the income limitation pertain to a different calendar year from that on which the tax day falls and to which the taxable property limitation provision specifically pertains. The calendar year containing "tax day" is also the latest calendar year for which income is readily ascertainable by the property owner for the purpose of furnishing the affidavit to the assessing officer for determination of eligibility for exemption based upon the income limitation contained in the statute. Surely, the legislature did not intend the absurd result of imposing an income limitation and fixing it by the calendar year of completion of the tax assessment

⁴ Two early opinions of the Attorney General appear to reach a contra-result where property has been subjected to specific property tax (1913 O.A.G., p. 562, and 1914 O.A.G., p. 732).

⁵ See 41 *Words and Phrases*, "Taxable Property", p. 192, for additional authority.

⁶ C.L.S. § 205.132; M.S.A. 1960 Rev. Vol., § 7.556(2).

⁷ C.L.S. § 211.2; M.S.A. 1960 Rev. Vol., § 7.2.

⁸ C.L.S. § 211.13; M.S.A. 1960 Rev. Vol., § 7.13.

roll when total income could not be determined with any certainty until long after the date that the assessment roll has been prepared.

It is therefore my opinion that a proper construction of the language "calendar year" as used in subdivision (i) of subsection Eleventh refers to the same calendar year in which presently the tax day falls.⁹ For example, if exemption were claimed for taxable property on the tax day December 31, 1963, for the property taxes due and payable in the calendar year 1964, the income limitation of \$7,500.00 would pertain to the income received for the calendar year 1963 and not to the 1964 calendar year.

As to Question 4 — the meaning of the term "to the value of" as used in subdivision (k) of subsection Eleventh:

As indicated by the statutory language quoted above, prior to Act 148, P.A. 1963, the statute provided that the term "to the value of" as used in subsection Eleventh meant the assessed valuation as determined by the supervisor or assessing officer, as changed, endorsed or certified by the local board of review or by the State Tax Commission on appeal. In Opinion No. 4107, as modified by Opinion 4107A, this language was construed to refer to the local assessed value and not to the county or state equalized value. The legislature deleted the language that referred to assessed value and substituted "that value which is fixed according to state equalization". By Act 148 the legislature also amended subsection Eleventh and provided that the exemption set forth in subdivision (i) should pertain only to a person who is the owner of taxable property which does not have a greater state equalized value than \$10,000.00.

It is thus clear that the legislature has determined that the value of taxable property for veterans' homestead exemption purposes is the local assessed valuation, as modified by the process of county and state equalization. Therefore, if one claiming a homestead exemption under subsection Eleventh has taxable property (tangible real or personal property located in this state) valued at \$10,000.00, or less, as determined by state equalization, he is entitled to the exemption.

As to Question 5 — pertaining to the \$2,000.00 exemption figure.

As indicated in answer to question 4, the legislature defined "to the value of" as used in subsection Eleventh to mean the state equalized value and specifically amended subdivision (i) to provide that the \$10,000.00 eligibility limitation pertained to state equalized valuation. The legislature, however, makes no specific reference to how the value of \$2,000.00 as used in subdivision (i) is to be ascertained.

It is logical to conclude that the legislature intended for the same value reference to govern in determining eligibility and reimbursement. This value is the value fixed by state equalization. Statutes are to be construed so as to produce a consistent and harmonious enactment as a whole. See *inter alia*

Van Antwerp v. State, 334 Mich. 593

It is the opinion of the Attorney General that the legislature did not intend

⁹ See *Pere Marquette Railroad Co. v. Kalamazoo, Lake Shore & Chicago Railway Co.*, 158 Mich. 40, 41, where the Court dealt with the meaning of calendar year and held similar language to mean the calendar year for which the taxes are being fixed.

to use one standard to determine eligibility, namely, the standard of state equalized value, and to use the local assessed valuation to determine the amount of reimbursement. The local exemption and state reimbursement portion is \$2,000 of state equalized value determined by adjusting local assessed value by the state equalization factor applicable for the particular local assessing unit.

As to Question 6 — pertaining to the \$7,500 income limitation:

Act 148 provides that a person applying for a veteran's exemption under subsection Eleventh "shall not be in receipt of an income in excess of \$7,500.00 per calendar year". The legislature then qualified this statement as follows:

"* * * unless such serviceman or widow of such ex-serviceman is in receipt of compensation paid by the veterans administration or the armed forces of the United States for service incurred disabilities."

The language following the word "unless" should be construed to constitute an exception to the requirement that an eligible applicant shall not be in receipt of an income in excess of \$7,500.00 per calendar year. The amount of income received by a person entitled to homestead exemption is immaterial and should be disregarded whenever such person receives compensation for a service-connected disability. Such construction of the statute is consistent with the manifest public policy of aiding disabled veterans.

It is therefore the opinion of the Attorney General that the income limitation of \$7,500.00 does not pertain to a serviceman or the widow of an ex-serviceman, if either is receiving compensation for service-connected disability from the Veterans Administration or the Armed Forces of the United States.

As to Question 7 — that is, what tax year will be affected by Act 148, P.A. 1963:

As indicated in answer to Question 3, the taxable status of persons and property are determined as of December 31, the tax day. Inasmuch as Act 148 will take effect prior to December 31, 1963, these amendments would affect the taxable status of property and persons as of that date and would be effective for the tax year 1964. The amendments would not have any effect on tax payments due December 1, 1963. Taxable status for such payments is determined as of December 31, 1962, prior to the effective date of Act 148, P.A. 1963.

CONCLUSION

It is the opinion of the Attorney General that the provisions contained in Act 148, P.A. 1963, concerning eligibility refer to persons who are performing or who have performed military service as otherwise defined in subsection Eleventh; that eligibility and the scope of the exemption relate to property values determined by reference to state equalized value, rather than local assessed value; that the \$7,500 income limitation has no application to a serviceman or his widow who receives service-connected disability payments from the Veterans Administration or the Armed Forces of the United States; that the amendments to subsection Eleventh become effective

for taxes which will be due and payable, based on the status of property and persons as of the tax day December 31, 1963; and that the income limitation of \$7,500 pertains to income earned during the calendar year in which the tax day falls.

FRANK J. KELLEY,
Attorney General.

631104.1

COUNTIES: Board of Supervisors.

Members of county board of supervisors are not entitled to compensation for serving on a district board of health, a county sinking fund commission authorized by Act 161, P.A. 1923, or a county forestry commission.

Members of county board of supervisors are entitled to compensation for serving on a board of determination for a county drain, and a sinking fund commission authorized by Act 42, P.A. 1913.

No. 4216

November 4, 1963.

Hon. Billie S. Farnum
Auditor General
The Capitol
Lansing, Michigan

You have asked whether members of the county board of supervisors may serve on a district board of health, a board of determination for a county drain, county sinking fund commissions, and a county forestry commission. You also asked what compensation, if any, the members should be paid if they do serve on said boards and commissions.

There are two general rules based on existing statutes which are pertinent. First, section 30 of Act 156, P.A. 1851, as last amended by Act 136, P.A. 1962,¹ provides for compensating members of the county board of supervisors for attending board meetings and for serving as a member of a committee of the board, and a supervisor is not entitled to compensation for serving on boards and commissions which are not committees of the county board of supervisors unless there is other statutory authority for it.

The second general rule is based on section 30a of Act 156, P.A. 1851, as amended.² Such rule is, that members of county boards of supervisors cannot receive any appointment from, or be employed in any capacity whatsoever by any officer, board, committee or other authority of such county if there is a salary to be paid for the services.³

The first board that you asked about was a district board of health. Section 7 of Act 306, P.A. 1927,⁴ provides for district boards of health com-

¹ M.S.A. Cur. Mat. § 5.353, p. 171.

² C.L. 1947 § 46.30a; M.S.A. 1961 Rev. Vol. § 5.353(1).

³ The legislature may, in the future, authorize service on governmental bodies established for the purposes set forth in Article VII, Sec. 28 of the Constitution of 1963.

⁴ C.L. 1948 § 327.207; M.S.A. 1956 Rev. Vol. § 14.167.