

Taxation; Disabled veteran exemption

Number: INFORMAL

Date: May 16, 1997

Mr. Thomas V. Dannheisser
Santa Rosa County Attorney
6865 Caroline Street
Milton, Florida 32570-4978

RE: TAXATION--HOMESTEAD--EXEMPTION--VETERANS--HANDICAPPED PERSONS--
applicability of disabled veterans' exemption from taxation on property when veteran not in
residence. ss. 196.031, 196.081, Fla. Stat.

Dear Mr. Dannheisser:

On behalf of the Santa Rosa County Property Appraiser, you have asked for my opinion on
substantially the following question:

May a totally and permanently disabled veteran receive the property tax exemption provided by
section 196.081, Florida Statutes, if the residence is owned but not personally occupied by the
veteran?

In sum:

A totally and permanently disabled veteran must own the property *and* it must be the veteran's
residence in order to qualify for the total exemption from property taxes provided by section
196.081, Florida Statutes.

According to information you have submitted, a totally and permanently disabled veteran owns a
home in Santa Rosa County in which his ex-wife lives. The veteran does not live on the property.
You have asked whether the wording of section 196.081, Florida Statutes, requires that the
veteran reside on the property in order to take advantage of the exemption from taxation
provided for in the statute.

Section 196.081, Florida Statutes, creates a total exemption from property taxes for certain
permanently and totally disabled veterans. The statute provides:

"(1) Any real estate used and owned as a homestead by a veteran who was honorably
discharged with a service-connected total and permanent disability and for whom a letter from
the United States Government or United States Department of Veterans Affairs or its
predecessor has been issued certifying that the veteran is totally and permanently disabled is
exempt from taxation, provided the veteran is a permanent resident of the state on January 1 of
the tax year for which exemption is being claimed or on January 1 of the year the veteran
died." [1]

The statute establishes no limit for the amount of the exemption and this office has concluded that a disabled veteran meeting all the conditions and requirements of the statute would be entitled to receive a total exemption on any real estate used and owned as a homestead by the veteran.[2] Thus, section 196.081, Florida Statutes, requires that, in order to qualify for this total exemption from property taxes, the disabled veteran must use *and* own the property. The use of the conjunctive "and" in section 196.081, Florida Statutes, leads to the conclusion that both requirements must be met simultaneously.[3]

Therefore, it is my opinion that a totally and permanently disabled veteran must use the property as a residence in order to claim entitlement to an exemption from taxation of the property under section 196.081, Florida Statutes.[4] However, as this office recently noted in Attorney General's Opinion 97-19, Florida courts have determined that physical presence is not the equivalent of residence for purposes of qualifying for homestead tax exemptions.

Your letter also mentions the homestead tax exemption set forth in section 196.031, Florida Statutes. This statute authorizes the property appraiser to allow an exemption up to an assessed valuation of \$25,000 to:

"Every person who, on January 1, has the legal title or beneficial title in equity to real property in this state and who resides thereon and in good faith makes the same his or her permanent residence, or the permanent residence of another or others legally or naturally dependent upon such person, is entitled to an exemption from all taxation, except for assessments for special benefits, up to the assessed valuation of [\$25,000][5] on the residence and contiguous real property, as defined in s. 6, Art. VII of the State Constitution." [6]

This exemption is a limited one, applicable to owner-occupied residential property and is distinct from the total exemption from taxation provided by section 196.081, Florida Statutes. The total exemption established in section 196.081, Florida Statutes, is strictly limited and may be claimed only by the disabled veteran who owns and uses the property as a homestead or by the surviving spouse of such a veteran under specifically prescribed conditions.[7]

As this office has previously noted, a veteran who applies for the limited exemption under section 196.031(3) would lose his entitlement to the total exemption under section 196.081, Florida Statutes.[8] Thus, the limited homestead tax exemption in section 196.031, Florida Statutes, and the total exemption from homestead taxation for totally and permanently disabled veterans operate independently.

Determination of the validity of a claim made by a person that he or she is entitled to a homestead exemption under section 196.031 because such property is "the permanent residence of another or others legally or naturally dependent upon such person" is ultimately a question for the property appraiser to resolve based on the facts of the case.

Sincerely,

Robert A. Butterworth
Attorney General

[1] *And see* Rule 12D-7.004, F.A.C., implementing the statute.

[2] *See* Op. Att'y Gen. Fla. 76-228 (1976).

[3] *Cf.* Op. Att'y Gen. Fla. 97-19 (1997), in which this office stated that based on the use of the conjunctive "and" in section 196.031(1), entitlement to Florida's homestead exemption from taxation is determined by the simultaneous existence of three factors on January 1 of the tax year: possession of legal or equitable title to the property, *and* residence on the property, *and* the intention of the taxpayer to make the property his or her permanent residence.)

[4] I would note that the statute recognizes that the surviving spouse of permanently and totally disabled veteran may also claim the exemption under certain specified circumstances. *See* s. 196.081(3), Fla. Stat., and Rule 12D-7.004, F.A.C.

[5] Section 196.031(3)(e), Fla. Stat., changed the assessed valuation from \$5,000 to \$25,000 for levies of taxing authorities other than school districts.

[6] Section 196.031(1), Fla. Stat.

[7] *See* Rule 12D-7.004, F.A.C.

[8] Attorney General's Opinion 77-23 (1977). *And see* Op. Att'y Gen. Fla. 76-228 (1976) ("[A] *veteran* qualifying under s. 196.081, F.S. (1976 Supp.), by meeting all the conditions and requirements specified therein would be entitled to receive *total* exemption on real estate owned and used by such veteran as a homestead, while a *nonveteran* or a nonqualifying veteran who was totally and permanently disabled would *not* be entitled to such total exemption provided for in s. 196.081 on real estate owned and used as a homestead by such nonveteran or nonqualifying veteran.")