Taxation, documentation for veteran's exemption

Number: AGO 2012-16

Date: April 25, 2012

Subject:
Taxation, documentation for veteran's exemption

Ms. Ana C. Torres
Attorney for the Suwannee County
Property Appraiser
1828 Riggins Lane
Tallahassee, Florida 32308

RE: PROPERTY APPRAISER—TAXATION—EXEMPTIONS—VETERANS—documentation required for veteran's eligibility for total exemption. s. 196.081, Fla. Stat.

Dear Ms. Torres:

On behalf of the Honorable Lamar Jenkins, Suwannee County Property Appraiser, you ask the following questions:

1. What documentation certifies that a veteran is "totally and permanently" disabled due to a service-connected disability, which is necessary to establish prima facie evidence of eligibility for the exemption under section 196.081(1)?

2. Because the Department of Veterans' Affairs only issues letter VAFL 27-333 to certify that a veteran is "totally and permanently" disabled due to a service-connected disability and eligible for the exemption under section 196.081(1), does a property appraiser have any authority to rely on documentation other than letter VAFL 27-333?[1]

3. If the answer to question 2 is in the affirmative, what documentation, other than letter VAFL 27-333, is sufficient to certify that a veteran is "totally and permanently" disabled due to a service-connected disability and eligible for the exemption under section 196.081(1)?

In sum:

The VAFL 27-333 letter issued by United States Department of Veterans Affairs certifying that a veteran is "totally and permanently" disabled due to a service-connected disability is not the only documentation that may be accepted by a property appraiser in determining the eligibility of a veteran for the exemption afforded by section 196.081(1), Florida Statutes. While this office cannot list what documents may or may not be acceptable to establish eligibility, the statute requires that there must be a letter from the United States Government or from the Department of Veterans Affairs (or its predecessor) certifying that the veteran is totally and permanently disabled from a service-connected disability. Whether a letter provided by the United States Government or the United States Department of Veterans Affairs in any given instance is

sufficient to satisfy such a requirement is a determination that must be made by the property appraiser on a case-by-case basis.

As your questions are interrelated, they will be answered together.

Section 196.081(1), Florida Statutes, provides:

"Any real estate that is owned and used 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, if the veteran is a permanent resident of this state on January 1 of the tax year for which exemption is being claimed or was a permanent resident of this state on January 1 of the year the veteran died."[2] (e.s.)

The process for applying for an exemption under this section is described in section 196.011, Florida Statutes.[3] During the 2012 regular session, legislation was passed that would permit an applicant for the exemption under this section to apply for the exemption before receiving the necessary documentation from the United States Government or the United States Department of Veterans Affairs or its predecessor.[4]

To implement the provisions of section 196.081, Florida Statutes, the Department of Revenue has adopted Rule 12D-7.004, Florida Administrative Code, which provides in pertinent part:

"The veteran, his or her spouse, or surviving spouse must have a letter from the United States Government or from the United States Department of Veterans Affairs or its predecessor certifying that the veteran has a service-connected total and permanent disability or that the death of the veteran resulted from service-connected causes while on active duty."[5]

You note that the Department of Revenue has stated that an identification card issued by the State of Florida Department of Veterans' Affairs could not be used as proof of eligibility for the disability exemption afforded by section 196.081, Florida Statutes.[6] The letter notes the language of section 196.081 referring to a letter from the *United States* Government or *United States* Department of Veterans Affairs or its predecessor as well as the language of section 295.17, Florida Statutes, which provides that the state card "may be used by the veteran as proof of eligibility for any benefit provided by state law for 100-percent, service-connected permanently and totally disabled veterans *except those benefits provided by ss. 196.081*, 196.091, and 196.24."[7] (e.s.)

You refer to VAFL 27-333, which you state is the only letter issued by the Department of Veterans' Affairs to certify that a veteran is "totally and permanently" disabled with a service-connected disability.[8] You, therefore, question whether a property appraiser may accept any documentation other than VAFL 27-333 in granting an exemption for a total and permanent service-connected disability.

As noted above, both the statute and the rule refer to a letter certifying the veteran's service-connected total and permanent disability from the "the United States Government *or* United

States Department of Veterans Affairs or its predecessor." (e.s.) Had the Legislature intended to require that only such certification letters be issued by the U.S. Department of Veterans Affairs, it could have easily done so, but it did not. The word "or" is generally construed in the disjunctive when used in a statute or rule and normally indicates that alternatives were intended.[9] Moreover, statutory language is not to be assumed to be surplusage; rather a statute is to be construed to give meaning to all words and phrases contained within statute.[10] To read the phrase "United States Government" as referring only to the United States Department of Veterans Affairs would render the phrase meaningless. The statute thus recognizes that a letter certifying a veteran's service-connected total and permanent disability may come from the United States Government as well as from the United States Department of Veterans Affairs or its predecessor.

Accordingly, I am of the opinion that the VAFL 27-333 letter issued by the United States Department of Veterans Affairs to certify that a veteran is "totally and permanently" disabled due to a service-connected disability is not the only documentation that may be accepted by a property appraiser in determining the eligibility of a veteran for the exemption afforded by section 196.081(1), Florida Statutes.

Your first and third questions concern the documentation necessary to establish evidence of eligibility for the exemption under section 196.081(1), Florida Statutes. The statute requires a letter from the United States Government or from the United States Department of Veterans Affairs (or its predecessor) certifying that the veteran is totally and permanently disabled from a service-connected disability.[11] Pursuant to section 196.081(2), Florida Statutes, the production by a veteran or the spouse or surviving spouse of a letter of total and permanent disability from the United States Government or United States Department of Veterans Affairs or its predecessor before the property appraiser is prima facie evidence of the fact that the veteran or the surviving spouse is entitled to the exemption. This office, however, cannot list what documents may or may not be acceptable to establish eligibility. Moreover, whether a letter from the United States Government or the United States Department of Veterans Affairs (or its predecessor) presented to the property appraiser contains sufficient information to constitute a certification of "total and permanent disability" is a determination that must be made by the property appraiser on a case-by-case basis.

Sincerely,

Pam Bondi
Attorney General

PB/tjw

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[1] While your letter states that the Florida Department of Veterans' Affairs issues VAFL 27-333, the letter is issued by the U.S. Department of Veterans Affairs, not the Florida Department of Veterans' Affairs. VAFL 27-333 is issued by the federal agency for use in Florida.

[2] *See* Art. VII, s. 3(b), Fla. Const., which provides in pertinent part that "[t]here shall be exempt from taxation . . . to every widow or widower or person who is blind or totally and permanently

disabled, property to the value fixed by general law not less than five hundred dollars." This provision contemplates that legislative implementation be done by general law. Section 196.081, Fla. Stat., constitutes such an implementation of this constitutional provision. *See* Op. Att'y Gen. Fla. 76-228 (1976).

[3] *See* s. 196.011, Fla. Stat., which provides:

"Every person or organization who, on January 1, has the legal title to real or personal property, except inventory, which is entitled by law to exemption from taxation as a result of its ownership and use shall, on or before March 1 of each year, file an application for exemption with the county property appraiser, listing and describing the property for which exemption is claimed and certifying its ownership and use. The Department of Revenue shall prescribe the forms upon which the application is made. Failure to make application, when required, on or before March 1 of any year shall constitute a waiver of the exemption privilege for that year, except as provided in subsection (7) or subsection (8)."

The provisions of s. 196.011, Fla. Stat., are clearly applicable to veterans claiming an exemption under s. 196.081, Fla. Stat. *See, e.g.,* s. 196.011(1)(b), Fla. Stat.

[4] *See* s. 19, HB 7097 (2012 regular session) which provides that upon receipt of the documentation, the exemption shall be granted as of the date of the original application, and the excess taxes paid shall be refunded. Any refund of excess taxes paid shall be limited to those paid during the 4-year period of limitation set forth in s. 197.182(1)(e), Fla. Stat. The act was ordered engrossed, then enrolled on March 9, 2012, Fla. House Journal at 1651.

[5] Rule 12D-7.004(2), Fla. Admin. C.

[6] Florida Dept. of Revenue Property Tax Oversight Advisement Letter, OPN 93-0049, dated October 19, 1993.

[7] *And see* Rule 55A-1.001(3), Fla. Admin. C., providing in part:

"The following benefits require additional proof of eligibility and are *not* included in the benefits for which the identification card provides proof of eligibility:
(a) Real estate that is used and owned as a homestead by an eligible veteran that is exempt from taxation pursuant to the provisions of Section 196.081 or 196.091, Florida Statutes." (e.s.)

[8] As noted *supra*, the VAFL 27-333 letter is issued by the U.S. Department of Veterans Affairs for use in Florida.

[9] *See, e.g., Sparkman v. McClure*, 498 So. 2d 892 (Fla. 1986); *Telophase Society of Florida, Inc. v. State Board of Funeral Directors and Embalmers*, 334 So. 2d 563 (Fla. 1976); *Fort Walton Beach Medical Center, Inc. v. Dingler*, 697 So. 2d 575 (Fla. 1st DCA 1997); *Linkous v. Department of Professional Regulation*, 417 So. 2d 802 (Fla. 5th DCA 1982); Ops. Att'y Gen. Fla. 00-06 (2000) (use of the term "or" in a statute is generally construed to be disjunctive, indicating that alternatives were intended).

[10] *See, e.g., Terrinoni v. Westward Ho!*, 418 So. 2d 1143 (Fla. 1st DCA 1982); *Unruh v. State*, 669 So. 2d 242 (Fla. 1996) (as a fundamental rule of statutory interpretation, courts should avoid readings that would render part of a statute meaningless); Ops. Att'y Gen. Fla. 95-27 (1995) and 91-11 (1991) (statute must be construed so as to give meaning to all words and phrases contained within that statute).

[11] This office has been advised by the Florida Department of Veterans' Affairs, Division of Benefits and Assistance, that, for example, in some cases a branch of the U.S. armed forces has provided such a certification to a veteran.