

STATE OF TENNESSEE

Office of the Attorney General



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March 29, 2016

The Honorable Joe Pitts
State Representative
32 Legislative Plaza
Nashville, TN 37243

Dear Representative Pitts:

Enclosed is the attached opinion per your request. Please let us know if you have any further questions. As always, we appreciate your assistance and cooperation.

Sincerely,

A handwritten signature in black ink that reads "Herbert H. Slattery III".

HERBERT H. SLATERY III
Attorney General and Reporter

Enclosure

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

March 29, 2016

Opinion No. 16-12

Validity of Annual Income Threshold for Disabled Veterans' Property Tax Relief

Question 1

Does the maximum annual income threshold of Tenn. Code Ann. § 67-5-704(a)(2)(A) conflict with 38 U.S.C. § 5301(a)(1), which mandates that veterans' benefits be exempt from taxation?

Opinion 1

No. The annual income threshold provided in Tenn. Code Ann. § 67-5-704(a)(2)(A) does not result in the taxation of a "payment" under 38 U.S.C. § 5301(a)(1).

ANALYSIS

Tennessee Code Ann. § 67-5-704 provides tax relief for certain disabled veterans with respect to local property tax on their residences.


There shall be paid from the general funds of the state to certain disabled veterans the amount necessary to reimburse such taxpayers for all or part of the local property taxes paid for a given tax year on that property that the disabled veteran owned and used as the disabled veteran's residence as provided in this section.

Tenn. Code Ann. § 67-5-704(a)(1).


To qualify for this property tax relief, "the taxpayer's annual income from all sources shall not exceed sixty thousand dollars (\$60,000), or such other amount as set forth in the general appropriations act." Tenn. Code Ann. § 67-5-704(a)(2)(A). The language "annual income from all sources" in subsection 704(a)(2)(A) necessarily includes benefits under government programs, such as payments of veterans' benefits under Title 38 of the United States Code. *See id.* (referring to "veterans entitlements" as one of several sources of income from government programs within the meaning of 704(a)(2)(A)). This income threshold is used solely to determine eligibility for state property tax relief.

Veterans' benefits are not taxable under federal law. Pursuant to federal law, "payments of benefits" under "any law administered by the Secretary [of Veterans Affairs] . . . shall be exempt from taxation . . ." 38 U.S.C. § 5301(a)(1). You have asked whether subsection 704(a)(2)(A) conflicts with this federal prohibition on taxation of "payments of benefits" by requiring payments of veterans' benefits to be included in the calculation of income for purposes of determining eligibility for Tennessee's property tax relief.

There is no conflict. The federal statute prohibits taxation of payments of veterans' benefits, not the taxation of property owned by the individuals receiving those payments. Nor is taxation of property functionally the equivalent of taxation of payments of veterans' benefits. Moreover, Tennessee is not in fact taxing any income received by veterans from the payment of veterans' benefits. It is merely using payment of those benefits as part of the calculation to determine income eligibility for property tax relief under Tenn. Code Ann. § 67-5-704.¹


HERBERT H. SLATTERY III
Attorney General and Reporter


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Requested by:

The Honorable Joe Pitts
State Representative
32 Legislative Plaza
Nashville, TN 37243

¹ For the same reasons, there is no conflict with the guidance offered at page 18 in IRS Publication 525 (2015), to which your opinion request makes reference.