

59.

APPROVAL, ARTICLES OF INCORPORATION OF THE PIKE TOWNSHIP
FARMERS' MUTUAL INSURANCE COMPANY.

COLUMBUS, OHIO, February 5, 1929.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am returning to you herewith the amendment to the Articles of Incorporation of Pike Township Farmers' Mutual Insurance Company with my approval endorsed thereon.

Respectfully,
GILBERT BETTMAN,
Attorney General.

60.

EXEMPTION FROM TAXATION—WHEN FUNDS FROM WORLD WAR
VETERANS' ACT EXEMPT—SAID ACT INAPPLICABLE TO OTHER
WARS.

SYLLABUS:

(1) *The compensation, insurance and support allowance, received by virtue of the World War Veterans' Act of 1924, are exempt from taxation, under the provisions of Section 22 of said Act, (38 U. S. C. A., Section 454), as long as said funds are in their original form, in the hands of the beneficiary, or on deposit to his credit.*

(2) *Specific exemptions from taxation granted in the World War Veterans' Act of 1924, apply only to payments made under authority of said Act, and have no application to payments by way of pension or otherwise under other Acts of Congress.*

(3) *There is no authority under Section 4747 U. S. Revised Statute, (Section 54, Title 38 U. S. C. A.), Section 5327 G. C. of Ohio, or elsewhere, for the exemption from taxation of pension money, after the same has been received by the pensioner and placed on deposit in bank to his credit.*

COLUMBUS, OHIO, February 5, 1929.

HON. C. E. MOYER, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads as follows:

“We have a situation in this county, particularly at the Ohio Soldiers' and Sailors' Home, whereby the estates of ex-soldiers, through the administrators are claiming exemption of personal taxes on their estates in so far as bank accounts are concerned, claiming that the World War Act of 1924 exempts pension money from taxation and these administrators are claiming that the bank account represents pension money received by the soldiers. Some of these bank accounts in the estates run up to several thousand dollars in individual cases and are estates of Civil War veterans, Spanish-American War veterans and World War veterans. These administrators also are asking that the auditor refund taxes that have been paid on these bank deposits and are refusing to pay the unpaid taxes on said bank accounts.

I would like your opinion as to whether or not this World War Act of 1924 exempts pensions of all ex-soldiers and as to whether or not the money deposited in the bank, by said ex-soldiers, loses its identity as to being pension money. In some instances these bank deposits of deceased ex-soldiers cover deposits for several years. Most of the estates are of ex-soldiers from the Civil War and Spanish-American War."

Your first question is as to whether the "World War Act of 1924 exempts pensions of all ex-soldiers."

The act known as the "World War Veterans' Act of 1924" (Act June 7, 1924, c. 320, Section 1, 43 Stat. 607 (38 USCA Section 421), makes provisions for compensation and treatment for disabled veterans, this being Part 2 of the Act (36 USCA Section 471 et seq.); for their insurance, this being Part 3 (38 USCA Section 511 et seq.); and for vocational rehabilitation, this being Part 4 of the Act (38 USCA Section 531 et seq.). Said Act is found in Chapter 10 of Title 38 of the U. S. Code.

Said Act is evidently intended to provide relief for persons who were disabled, and for the dependents of those who died as a result of disability suffered in the military service of the United States, during the World War.

Section 422 of said Part I reads in part, as follows:

"This chapter is intended to provide a system for the relief of persons who were disabled, and for the dependents of those who died as a result of disability suffered in the military service of the United States between April 6, 1917, and July 2, 1921. For such disabilities and deaths no other pension laws or laws providing for gratuities or payments in the event of death in the service shall be applicable; *Provided, however,* That the laws relating to the retirement of persons in the regular military or naval service shall not be considered to be laws providing for pensions, gratuities or payments within the meaning of this section; *And provided further,* That compensation under Part I of this chapter shall not be paid while the person is in receipt of active-service or retirement pay. Parts II and IV of this chapter shall not be applicable to any disability or resultant death in the service if such disability occurred as a result of service prior to April 6, 1917, or after July 2, 1921."

This section limits the relief granted in said Chapter 10, to persons who were disabled, and for the dependents of those who died as a result of disability suffered in the military service of the United States between April 6, 1917, and July 2, 1921.

It further provides, that Part 2 of said Act, relating to compensation and treatment, and Part 4 of said Act, relating to vocational rehabilitation, shall not be applicable to any disability or resultant death in the service, if such disability occurred as a result of service prior to April 6, 1917, or after July 2, 1921.

Paragraph 14 of Section 424 of said Chapter, reads as follows:

"The terms 'World War,' 'during the period of the war,' and 'during the World War' mean the period beginning April 6, 1917, and ending July 2, 1921."

Section 471 of Title 38, U. S. C. A., in Part 2 of Chapter 10, provides for compensation for death or disability to whom payable and for what causes payable, and reads in part, as follows:

"For death or disability resulting from personal injury suffered or disease contracted in the military or naval service on or after April 6, 1917, and before July 2, 1921, or for an aggravation or recurrence of a disability existing

prior to examination, acceptance, and enrollment for service, when such aggravation was suffered or contracted in, or such recurrence was caused by, the military or naval service on or after April 6, 1917, and before July 2, 1921,
* * * .”

It will be noted that the general and special provisions of said Act are limited to soldiers of the World War. The provision for the exemption from taxation for the compensation, maintenance, and support allowance, under this Act, is limited to the soldiers of the World War. Said authority for said exemption is contained in Section 454 of Title 38 of U. S. C. A., and reads in part, as follows :

“The compensation, insurance, and maintenance and support allowance payable under Parts II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Parts II, III, or IV; and shall be exempt from all taxation. Such compensation, insurance, and maintenance and support allowance shall be subject to any claims which the United States may have, under Parts II, III, IV, and V, against the person on whose account the compensation, insurance, or maintenance and support allowance is payable.”

The provision herein for said exemption from taxation, is limited to the compensation, maintenance, and support allowance herein provided for soldiers of the World War and their dependents. It is, therefore, evident that under the World War Veterans' Act of 1924, and the amendments thereof, there is no provision for the exemption from taxation of pensions of the ex-soldiers of other wars.

In the Opinion, No. 3007, rendered December 10, 1928, by my predecessor to The Tax Commission of Ohio, it was held that, as stated in the syllabus :

“Estates that have been built up by guardians out of money received as payments under the World War Veterans' Act of 1924, are exempt from taxation under the provisions of Section 22 of said Act, (38 USCA, Section 454), as long as said funds are in their original form in the hands of the beneficiary or on deposit to the credit of his estate.”

This opinion holds that money received as payments under the World War Veterans' Act of 1924, is exempt from taxation under the provisions of said Act, and further limits said exemption to the time when said funds are in their original form, in the hands of the beneficiary, or on deposit to the credit of his estate. In said opinion it is stated, that :

“The Court of Appeals of the First Appellate District of Ohio, case number 3073, in its opinion, July 5, 1927, in the case of *The Tax Commission of Ohio vs. Chris Rife, et al.*, which opinion was sustained by the Supreme Court in *Tax Commission vs. Rife, supra*, stated as follows :

“This insurance was provided for and awarded when the nation was at war. It was a protective measure for the government as well as for the insured, and the use of the language “shall be exempt from all taxation,” in view of the fact that the government designated the permitted class and that the laws of Ohio are subject to the laws of the United States on this question, there can be no doubt that the language of the Act meant what it said in providing “shall be exempt from all taxation”,’”

The conclusions, therefore, in the opinion of my predecessor, are based upon the

specific exemptions granted to soldiers of the World War in said World War Veterans' Act of 1924, the provisions of which Act, as hereinbefore stated, do not apply to soldiers or pensions of other wars.

You also inquire as to whether money received as pensions by ex-soldiers, and deposited in the bank, loses its identity as to being pension money.

In said Opinion, number 3007, of my predecessor, it was held that the payments received under the World War Veterans' Act of 1924, retain their identity as such payments and are exempt from taxation as long as they are in their original form, in the hands of the beneficiary, or on deposit to the credit of his estate. This holding was based upon the expressed provisions in the World War Veterans' Act of 1924, and applied only to the payments under said Act.

The courts have not been uniform in their holdings as to the exact nature and status of pension money paid to the soldiers of wars other than the World War. There is no Federal Statute expressly exempting pensions from taxation. There is a Federal Statute providing that said pension money shall inure wholly to the benefit of the pensioner.

Section 54 of Title 38, USCA, reads as follows :

"No sum of money due, or to become due, to any pensioner shall be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, whether the same remains with the Pension Office, or any office or agent thereof, or is in course of transmission to the pensioner entitled thereto, but shall inure wholly to the benefits of such pensioner."

Section 5327, General Code of Ohio, defines credits and reads in part, as follows :

"The term 'credits' as so used, means the excess of the sum of all legal claims and demands, whether for money or other valuable thing, or for labor or service due or to become due to the person to pay taxes thereon, including deposits in banks or with persons in or out of the state, other than such as are held to be money, as hereinbefore defined, when added together estimating every such claim or demand at its true value in money, over and above the sum of legal bona fide debts owing by such person. * * * Pensions receivable from the United States shall not be held to be credits; * * * ."

Construing these sections together, it is manifest that pension money is exempt not only from execution, but also from taxation, so long as it is in course of transmission to the pensioner. This must be so else it would not inure wholly to the benefit of the pensioner.

In Cooley on Taxation, Vol. 2, Section 784, it is stated, that :

"The property of soldiers is not exempt in the absence of a statute so providing. Sometimes, however, such property is expressly exempted, at least in part; but such an exemption is a personal privilege and does not extend to the property of the wife. Pension money is not taxable until it reaches the pensioner, by virtue of the federal statutes; and even after it comes into his hands it is exempted by statute in some states. In some states property purchased with pension money is exempted to a certain extent, at least if application is made therefor. However, property purchased with pension money is not exempt unless made so by statute."

In 28 C. J. at page 187, Section 227, it is stated that :

"Pension moneys and bounties granted by the government for enlistment, or for service in the army, navy, or civil department of the government are not subject to garnishment while in the hands of the government. But after a pension or bounty has been paid to, and received by, the beneficiary, it is subject to garnishment in the hands of a third person to the same extent as other property, unless exempted by statute."

It would, therefore, appear that unless there is some Federal Statute exempting, from taxation, pension money on deposit in banks, or some Statute of Ohio expressly exempting said pension money, the same is not exempt from taxation.

It is noted that in Section 5327 of the General Code, *supra*, pensions receivable from the United States shall not be held to be "credits". This provision probably relates, however, to pension money still in the possession of the United States Government, and the receipt of which has not yet been had by the pensioner.

In the case of *Pentz vs. First National Bank, Appellant*, 75 Pa., Superior Ct., at page 1, the headnote reads :

"Pension money which has been deposited in bank by the pensioner and credited to his general running account and mingled with his other funds, is his property, free from restrictions and stands on the same footing as any other money belonging to him, and as such it can be applied by the bank to the payment of his notes when due. It is not pension money 'in the course of transmission' to the pensioner and is not entitled to the exemption provided for in the Act of Congress of March 3, 1873, U. S. Revised Statutes, Section 4747."

The Opinion in this case, after reciting the making of several deposits, states at page 4, that :

"This recital shows that his deposits were so mingled together in one general account that their respective identities were lost; that there was no possible means of knowing against which items checks drawn by the plaintiff on the common fund were chargeable and that it was impossible to determine whether the balance remaining at any time was made up of pension checks or other items."

In the case of *McIntosh vs. Aubrey*, 185 U. S. 122, the court was construing Section 4747, Revised Statutes of the U. S., now Section 54 of Title 38, U. S. Code, and stated at page 124, that :

"We think the purpose of Congress is clearly expressed. It is not that pension money shall be exempt from attachment in all of its situations and transmigrations. It is only to be exempt in one situation, to wit, when 'due or to become due'. From that situation the pension money of plaintiff in error had departed. * * *

We concur, therefore, with the learned judge of the Court of Common Pleas of Pennsylvania, that 'the exemption provided by the act protects the fund only while in the course of transmission to the pensioner. When the money has been paid to him it has "inured wholly to his benefit," and it is liable to seizure as opportunity presents itself. The pensioner, however, may use the money in any manner, for his own benefit and to secure the comfort of his family, free from the attacks of creditors; and his action in so doing will not be a fraud upon them'. (10 Pa. Super. Ct. 275.) *Judgment affirmed.*"

In construing Section 4747, R. S. of United States, (Sec. 54, Title 38 U. S. C. A.) as to whether pension money is taxable or not, the courts apparently have gone no further, generally, than to hold that said pension money is exempt while in the Pension Office, or in the hands of an officer or agent thereof, or in the course of transmission to the pensioner entitled thereto.

The provision in Section 5327 of the General Code, is in harmony with the United States Statute and the holdings of the courts, in construing said Statute, as said provision exempt pensions receivable from the United States. It would, therefore, appear that the Legislature had in mind the exemption of said pensions, only while in the course of transmission to the pensioner. In the case of *Bednar vs. Carroll, Treas.*, 116 N. W., page 315, the Supreme Court of Iowa, construing Rev. Stat., U. S., Sec. 4747, McClain, Judge, states at page 316, as follows:

"In the first place, we find no authority for allowing an exemption from taxation of the interest received on pension money. The provision of the federal statute is that no sum of money due or about to become due to any pensioner shall be liable to seizure under process while remaining in the pension office or with any officer or agent thereof, or in the course of transmission to the pensioner, but shall inure wholly to the benefit of such pensioner. This statutory provision is fully satisfied when the pension money is allowed to pass into the hands of the pensioner to be used by him as funds received from other sources. The state statute is not broader in its terms, for it simply provides that pensions are not to be included in the term "credits" which are subject to taxation."

In the chapter on taxation, in 37 Cyc., at page 909, it is stated that:

"Money due or payable to a beneficiary under the military pension laws of the United States remains under the control of the federal government while in course of transmission to the pensioner and is not subject to attachment or seizure under any legal or equitable process, but is to inure wholly to the benefit of the pensioner. It is not therefore taxable until after it reaches the exclusive possession of the pensioner, and even then, by statute in several states, it is exempt from all taxes."

In the case of *Fulweiler vs. Infield's Guardian*, 3 O. C. D., 338, the Mahoning County Circuit Court, in construing Section 4747, Rev. Stat., U. S., holds that under said section:

"Pension money is not exempt from liability for the pensioners debts after it has come into his hands, and there is no statute in Ohio exempting pension money in the hands of the pensioner from liability for his debts."

In the course of the opinion the court reviews and considers the construction placed upon said Section 4747, Rev. Stat., U. S., and at page 540, states:

"So that there are ten states of the Union where the Supreme Court, or the highest court in the state, * * * has held that pension money, after it is received by the pensioner, is liable so far as the United States Statute is concerned. * * *

Now, upon this proposition it would seem there could be no question as to where the weight of authority laid, and the construction which those courts

place upon it seems to be reasonable. We think it is the true construction, and that the court below erred in holding that in Ohio the pension money under that Sec. 4747 Rev. Stat. of the United States, was exempt. * * * "

In consideration of the foregoing discussion and authorities cited and considered, I have reached the conclusion, specifically answering your second question, that there is no authority under said Section 4747, U. S. Revised Statutes, (Section 54, Title 38, U. S. C. A.), or Section 5327 G. C. of Ohio, or elsewhere for the exemption from taxation of pension money after the same has been received by said pensioner, and placed on deposit in bank to his credit.

Summarizing :

(1) The compensation, insurance and support allowance received by virtue of the World War Veterans' Act of 1924, are exempt from taxation, under the provisions of Section 22 of said Act (38 U. S. C. A., Sec. 454), as long as said funds are in their original form, in the hands of the beneficiary, or on deposit to his credit.

(2) Specific exemptions from taxation granted in the World War Veterans' Act of 1924, apply only to payments made under authority of said Act, and have no application to payments by way of pension or otherwise under other Acts of Congress.

(3) There is no authority under Section 4747, U. S. Revised Statute, (Section 54, Title 38, U. S. C. A.), Section 5327, G. C. of Ohio, or elsewhere, for the exemption from taxation of pension money, after the same has been received by the pensioner and placed on deposit in bank to his credit.

Respectfully,

GILBERT BETTMAN,

Attorney General.

61.

COUNTY BOARD OF EDUCATION—TRANSFER OF TERRITORY TO CITY SCHOOL DISTRICT—MANDATORY WHEN 75% OF ELECTORS PETITION—RIGHT OF TRANSFEREE TO ACCEPT OR REJECT.

SYLLABUS:

When a petition is filed with a county board of education, signed by 75% of the electors residing in a portion of territory comprised within a school district of the county school district, asking that that portion of territory be transferred to a contiguous city school district, it becomes the mandatory duty of the county board of education, to make the transfer in accordance with the prayer of the petition filed with it. The city board of education may or may not accept the transfer so made.

COLUMBUS, OHIO, February 5, 1929.

HON. G. E. KALBFLEISCH, *Prosecuting Attorney, Mansfield, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication as follows:

"Enclosed you will find a letter written by H. H. Phelps, county superintendent of schools, which I trust, is self-explanatory, your attention to which will be greatly appreciated."