



JOHN W. COVERT CHAPTER 47 Chartered June 14, 1937

D I S A B L E D A M E R I C A N V E T E R A N S

P.O. BOX 388 ★ EAST LIVERPOOL, OH ★ 43920

Senate of Ohio Ways and Means Committee

HB 24

January 24, 2018

Testimony by Robert H. Bertschy, John W. Covert, Chapter #47, DAV (Disabled American Veterans)

Chairman Eklund and Ranking Minority Member Williams of the Senate Ways and Means Committee.

My name is **ROBERT H. BERTSCHY**, age 90, and I am a Disabled American Veteran. I am a member of the John W. Covert, Chapter # 47 DAV, (Disabled American Veterans) located in East Liverpool, Columbiana County, Ohio.

I have held many official positions in Chapter #47 including Secretary, Treasurer, Adjutant and Commander. I also have held several positions with the Department of Ohio Disabled Americans Veterans, including National Executive Committeeman. In 2016 I was inducted into the Ohio Veterans Hall of Fame.

John W. Covert, Chapter #47 DAV (Disabled American Veterans) was incorporated as a Non-Profit Ohio Corporation on May 31, 1978 and has been in good standing since that date.

It's Articles of Incorporation states:

“The Purpose or purposes for which said corporation is formed are: To uphold and maintain the Constitution and the laws of the United States; to realize the true American ideals and aims for which those eligible to membership fought; to advance the interests and work for the betterment of all wounded, gassed, injured and disabled veterans; to cooperate with the United States Veterans Administration and all other public and private agencies devoted to the cause of improving and advancing the condition, health and interest of all wounded, gassed, injured and disabled veterans’ to stimulate a feeling of mutual devotion, helpfulness and comradeship among all wounded, gassed, injured and disabled veterans; to serve

our comrades, our communities and our country; and to encourage in all people that spirit of understanding which will guard against future wars; and to do all things necessary and incident thereto.

In January 1942 the Disabled American Veterans National Organization was granted a determination by the IRS that it was federal tax exempt under Section 501(C)(4) of the Internal Revenue Code. The IRS recognized subordinate organizations were also tax exempt and the DAV National Organization has recognized Chapter #47 as a beneficial subordinate unit and to be tax exempt under Section 501(C)(4) of the Internal Revenue Code. (See Exhibit 1 and 1(A) dated May 20, 2015 from DAV National Headquarters)

Chapter #47 has been located at its present address at **617 Broadway**, East Liverpool since 1978. It's Building - Meeting Hall consists of a members room, an auxiliary members room, men's and women's restrooms which are handicap accessible and the building complies with the Americans with Disabilities Act. Chapter #47 does not have a liquor license nor lottery license. Chapter #47's principal fund raising are its members dues and the annual sale of the Commemorative WWI Disabled Veterans Forget-Me-Not lapel flowers which are purchased from the National DAV for resale by the local chapters. The members social activities are after the monthly meetings when Chapter #47 DAV serves a luncheon to its members, and otherwise, the members may meet to discuss current events, family, friends, politics, sports, charity, good works or just exchange their often repeated War Stories. Chapter #47 presently has approximately 200 members with about 25 active members. Its location at **617 Broadway** has been awarded an Exemption from Ohio Real Estate Taxes.

The subject property at **619 Broadway** and adjacent to the Chapter Building's Meeting Hall was acquired by a Quit-Claim Deed dated January 25, 2013. In 2015, the building was razed. The lot remaining was approximately 40' x 60'; the lot has been used exclusively by Chapter #47

for the DAV Chapters non-profit charitable purpose; and the lot has not been open for public use or activities. Chapter #47 had the intention and did erect a Memorial Monument “Dedicated To All American Veterans Wounded in All Wars and Conflicts”. It was dedicated on August 20, 2016. (See Exhibit 2(A) – East Liverpool Review article and Exhibits 2(B) and 2(C) photos)

Chapter #47 had filed an Application for Real Property Tax Exemption and Remission under ORC 5709.17 for the lot at **619 Broadway**. The Tax Commissioner in his Final Determination of October 8, 2015 denied the Application by concluding:

“Hence the applicant organization is exempt under Internal Revenue Code Section 501(C)(4), not 501(C)(19) or (23) as designated in RC 5709.17(B). Therefore the property does not satisfy the requirements of R.C. 5709.17(B) for tax year 2015”
(Exhibit 3 *Commissioners Final Determination*)

The Ohio Board of Tax Appeals in its Decision and Order on September 19, 2016, affirmed the Final Determination of the Tax Commissioner and stated:

“In its Notice of Appeal, DAV does not dispute the Commissioners conclusions, instead attempting to explain why it can “never qualify for exemptions under R.C. 5709.17(B) because it is unable and/or unwilling to take actions to convert to a 501(C)(19) organization. DAV admittedly does not meet the statutory provisions required for exemption pursuant to R.C. 5709.17(B) but “submits the decision of the Tax Commissioner by his strict and rigid interpretation *** is unreasonable and unlawful.”

Based upon the foregoing, it is clear that DAV does not qualify for exemption pursuant to R.C. 5709.17(B). While DAV suggests that the Board should somehow interpret such section to allow for exemption. “There is no authority under any rule of statutory construction to add to, enlarge, supply, expand, extend or improve the provisions of the statute to meet a situation not provided for” *** Our obligation is to apply the statute as written.”

(Ohio Board of Tax Appeals *Decision and Order p2*)

Section 501 (c)(19) is a subsection of the Internal Revenue Code that provides a Tax Exemption to “Veteran’s Organizations”. On its face, it would appear that all Veterans Organizations would seek exemption under this section. However, the DAV National Organization is tax exempt under §501 (c)(4) of the Internal Revenue Code. §501 (c)(4) pertains to “Social Welfare Organizations including certain War Veterans’ Organizations”. There are two reasons why DAV is not exempt under §501 (c)(19). One reason is historical and the other reason is substantive.

The Historical reason the DAV is not exempt under §501 (c)(19) as a Veteran’s Organization, is it predated §501 (c)(19) by half a century. §501 (c)(19) was not added to the Internal Revenue Code until the early 1970’s, long after the DAV had been federally chartered and granted its individual and group exemptions. The substantive reason the DAV is not a §501 (c)(19) organization requires further analysis. §501 (c)(19) organizations need not be comprised entirely of veterans, and in fact, can have up to 25% of non-veteran members. However, DAV’s membership is composed entirely of *wartime*, service connected, disabled veterans. In fact, DAV’s federal charter is virtually unique in that the organization is not even permitted to have honorary members. Membership in DAV requires an exclusive credential so the liberal rules of §501 (c)(19) offer no advantage to DAV. An entity that is not engaged primarily in service to veterans is not maintaining fidelity to the mission DAV assumed nearly a century ago. “Neither DAV’s Charter, nor its Mission Statement, envisions recreation as being a major focus of DAV’s attention. The Statement restated in NEC Regulation 10 gives clear guidance to the National Organization and the subordinate units about the organizations purposes. A Subordinate Unit with a different focus may well be doing good and useful things, but it is not furthering the purposes of

DAV. DAV is about service to Veterans, their dependents and survivors, nothing more, nothing less". *Non Profit Advisor for DAV Departments and Chapters. March 2011.*

Consequently, the National DAV and Ohio DAV have not converted their §501 (c)(4) classification into a §501 (c)(19) because it does not comply with the purposes or Mission Statement of the DAV. Also, a Non-Profit Charitable Organization cannot hold both an Internal Revenue Classification of §501 (c)(4) and a classification of §501 (c)(19). The John W. Covert Chapter #47 DAV cannot make the conversion without great financial expense and impairment of its status under its National and State Organization. In fact, Chapter #47's conversion to a Section 501(C)(19) entity to attempt to obtain the Exemption as a Veterans Organization would require it to withdraw from National DAV and State DAV. Thereafter, it is doubtful that Chapter #47 could ever again be a Subordinate Member of National DAV and State DAV which would impose a pale on a very important part of the lives of the Chapter's members and their families.

Chapter #47 believes the present interpretation and application of ORC 5709.17(B) by the Department of Taxation also has chilled the acceptance of donated real estate by other DAV Chapters because of their inability to obtain Tax Exemption for these properties.

The Chapter #47 property at **619 Broadway** and its usage meet all the requirements for a Non-Profit Charitable purpose and is consistent with its Section 501(C)(4) classification under the Internal Revenue Code.

On behalf of Chapter #47 DAV, we submit the Decision and Order of the Ohio Department of Taxation denying the Application for Exemption for the Real Property to be unreasonable and unlawful. Unless the Legislature amends ORC 5709.17(B) pursuant to H.B. 24, Chapter #47 (and other Ohio DAV Chapters similarly affected) can never qualify for Exemption because it is not a

Section 501(C)(19) Veterans Organization regardless of its Mission, its Good Works for Disabled Veterans, or its Non-Profit Charitable purposes and practices.

Thank you for allowing me to speak on behalf of the Members of Chapter #47 DAV and I'm sure on behalf of their Comrades at other Ohio DAV Chapters.

ROBERT H. BERTSCHY,
Chaplin
John W. Covert, Chapter #47, DAV