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September 8, 1993

BURTON W. OLIVER
Executive Director
No. 93/52

TO COUNTY ASSESSORS:

DISABLED VETERANS' EXEMPTION - ELIGIBILITY OF THE UNMARRIED SURVIVING SPOUSE
OF A PERSON WHO DIED WHILE ON ACTIVE DUTY IN THE MILITARY SERVICE

On November 3, 1992, the voters approved Proposition 160 authorizing the Legislature to expand the disabled veterans' (property tax) exemption to include the unmarried surviving spouse of a person who, as a result of a service-connected injury or disease, died while on active duty in the military service. Previously a person had to have been discharged from the service to be considered a "veteran" for property tax exemption purposes.

On July 19, 1993 the enabling legislation, Assembly Bill 162, was signed into law by the Governor as Chapter 140, Statutes of 1993. This new law is effective commencing with the 1994-95 fiscal year. To implement the constitutional requirement that the cause of death be service-connected, Chapter 140 provides that the Veterans' Administration shall determine whether an injury or disease is service connected. Thus, a claimant will need to provide a letter from the Veterans' Administration certifying such to be the case.

We are presently developing the necessary revisions to Form AH 261G, Disabled Veterans' Property Tax Exemption, and its instructions and will distribute the revised forms as soon as possible.

If you have any questions concerning the law change or forms, please contact our Exemption Unit at (916) 445-4982.

Sincerely,

Verne Walton, Chief
Assessment Standards Division

VW:bs
AL-28A-0089N



STATE BOARD OF EQUALIZATION

Assessment Standards Division
450 N Street, MIC: 64, Sacramento, California
(P. O. Box 942879, Sacramento, CA 94279-0064)

Telephone: (916) 445-4982
FAX: (916) 323-8765

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Executive Director

January 11, 1996

Mr. Gerald Rucker, Chief
Veterans Services Division
State Department of Veterans Affairs
1227 O Street, Suite 101
Sacramento, CA 95814

Dear Mr. Rucker:

This is in response to your recent letter to Mr. William Minor of our staff regarding [redacted] eligibility for the Disabled Veterans' Property Tax Exemption on her property at [redacted]. Enclosed with your letter was a copy of a letter to [redacted] from the Nevada County Assessor's Office advising her additional information regarding the decedent's dates of military service was necessary in order to properly evaluate her claim for the exemption.

As stated in your letter, the veteran, [redacted] served on active duty from June 15, 1955 until December 3, 1961, when, according to the DD 1300 (Report of Casualty), he was killed in a military aircraft accident outside the Aviano Air Base in Italy. The United States Department of Veterans Affairs subsequently granted the surviving spouse service-connected death benefits. Your question, as stated in your letter, is:

"If a person dies while on active duty in the military, having served only during 'peacetime,' and was not entitled to a campaign or expeditionary medal, and the United States Department of Veterans Affairs subsequently determines that the death was "service-connected,["] is the unmarried surviving spouse entitled to property tax exemptions under the provisions of Revenue and Taxation Code Section 205.5?"

It is our view that under such circumstances, the unmarried surviving spouse would not be eligible for the exemption.

Proposition 160, as adopted by the voters on November 3, 1992, expanded the disabled veterans' exemption by providing that the Legislature may exempt the home of an unmarried surviving spouse if the person, as a result of service-connected injury or disease, died while on active duty in the military service. Proposition 160's enabling legislation, Chapter 140 (Assembly Bill 162, Statutes of 1993), expressly limits the definition of a veteran to Article XIII, Section 3(o) of the California Constitution:

January 11, 1996

- “ . . . who . . . (2) served either
- (i) in time of war, or
 - (ii) in time of peace in a campaign or expedition for which a medal has been issued by Congress, or
 - (iii) in time of peace and because of a service-connected disability was released from active duty”

In the matter at hand, it appears [REDACTED] did not serve in time of war and did not serve in a campaign or expedition for which a medal has been issued by Congress. Thus, in order for [REDACTED] to be eligible for the exemption, [REDACTED] would have to have been released from active duty and, because of a service-connected disability, was rated as 100 percent totally disabled, received a 100 percent disability rating because of unemployability, or died as a result of a service-connected injury or disease.

You contend in your letter that “[a] service-connected death occurring while on active duty is clearly for all intents and purposes, a ‘release from active duty.’” In our view, “release from active duty” means a discharge from active duty and is clearly distinguishable from death that occurred while on active duty, particularly since Section 205.5 contains a separate provision for service-connected deaths while on active duty.

Finally, it was the expressed intent of the Legislature in passing Assembly Bill 162 that the exemption be limited to only the unmarried surviving spouses of those who served in time of war or who served in a qualifying campaign or expedition and not be available to the spouse of every person who dies while on active duty.

Based on the preceding, it is our view the Nevada County Assessor’s Office, in accordance with the provisions of the law, properly denied [REDACTED] the exemption pending documentation that the decedent did in fact serve as expressed in (i) or (ii) above.

We trust we have adequately responded to your inquiry. Please note that the disabled veterans’ exemption is administered at the county level. Thus, the views expressed herein are advisory only and are not binding upon a county assessor. If we can assist you further, please let us know.

Sincerely,

original signed 1-11-96

Richard C. Johnson, Chief
Assessment Standards Division

RCJ:rfb

cc: Mr. Richard P. Allen
Mr. Larry Augusta
Mr. J. E. Speed
Mr. William A. Minor
bc: Mr. Charles Knudsen
Mr. Gene Palmer