

350.0022 **Qualification of Unmarried Surviving Spouse—Delayed Finding by DVA.** An unmarried surviving spouse of a deceased member of the armed services timely filed for the disabled veterans' exemption, but was found ineligible solely for lack of a determination by the Department of Veterans' Affairs that the death was service-connected. Later, the Department issued its determination of death was service related and backdated the determination to a date prior to the date of the filing of the claim. The claim should be reconsidered and allowed in light of the Department's determination, assuming all other requirements for the exemption are met. C 5/5/97. (M99-1)



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May 5, 1997

Captain  
United States Marine Corps  
[Faded text]  
Major Assistant [Faded text]  
3700 [Faded text]  
[Faded text]

Dear Captain [Faded text]:

This is in reply to your letter of March 5, 1997 in which you request information regarding availability of the disabled veterans' exemption to property owned by Ms. [Faded text] the unmarried surviving spouse of a deceased Army officer. Mr. [Faded text] died on January 30, 1993 but the Department of Veterans' Affairs only recently determined that his death was service-connected. You inquire as to whether applicable laws would "enable or prevent Ms. [Faded text] from obtaining a refund or credit" of property taxes previously paid.

As set forth below, the availability of the disabled veterans' exemption is dependent upon a filing, and the exemption is not retroactive to the date of a disabled veteran's death. Generally, if an exemption is not claimed within the time period specified by statute, it is deemed to be waived. However, in the case of the disabled veterans' exemption, there exists a provision in the Revenue and Taxation Code for partial cancellation of the tax if the claim is filed after the prescribed time limitation period but prior to December 10 of the fiscal year for which the exemption is claimed. Even in that case, if the exemption is not claimed prior to December 10 each year, it is deemed to be waived. The exception in circumstances such as these is the situation in which a claimant has filed a timely claim for the exemption, the claim has been denied because of the lack of any Department of Veterans' Affairs determination, and the Department later issues its determination as of an earlier date, a date prior to the date of filing. In such situations, we have been of the opinion that the claim should be reconsidered in light of the Department of Veterans' Affairs determination and allowed, assuming all other requirements for exemption are met.

**Law and Analysis**

Article XIII, section 4 of the California Constitution authorizes the legislature to exempt from property tax in whole or in part:

(a) The home of a person or a person's spouse, including an unmarried surviving spouse, if the person, because of injury incurred in military service, is blind in both eyes, has lost the use of 2 or more limbs, or is totally disabled, or if the person has, as a result of a service-connected injury or disease, died while on active duty in military service, unless the home is receiving another real property exemption.

Article XIII, section 4 is implemented by Revenue and Taxation Code section 205.5 which sets forth the more specific qualifying statutory requirements.

With regard to the availability of property tax exemptions, including the disabled veterans' exemption, Article XIII, section 6 requires that, in order for an exemption to apply, a claim must be timely filed in accordance with law. Section 6 provides that:

The failure in any year to claim, in a manner required by the laws in effect at the time the claim is required to be made, an exemption or classification which reduces a property tax shall be deemed a waiver of the exemption or the classification for that year.

Similarly, Revenue and Taxation Code section 260 provides that if any person fails to follow the required procedure, the exemption is waived by the person.

Filing requirements for exemptions claims are set forth in Revenue and Taxation Code section 255 which provides, in part, that:

(a) Affidavits required for exemptions named in this article, except the church exemption, the veterans' exemption, the homeowners' exemption, the religious exemption, and the aircraft of historical significance exemption, shall be filed with the assessor between the lien date and 5 p.m. on March 15. Affidavits for the veterans' exemption shall be filed with the assessor between the lien date and 5 p.m. on April 15.

Although section 255 mentions veterans' exemption claims, but not disabled veterans' exemption claims, section 276, the provision for late filing of claims for the disabled veterans' exemption, clarifies that disabled veterans' exemption claims are timely filed if filed no later than April 15. Furthermore, section 276 allows for a partial exemption if the claim is filed after April 15 but on or before the following December 10 and provides in relevant part:

(a) A claimant for the disabled veterans' property tax exemption for the 1976-77 fiscal year or any year thereafter may qualify for a partial exemption if the claimant

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fails to file the required affidavit with the assessor by 5 p.m. on April 15 of the calendar year in which the fiscal year begins, but files the claim on or before the following December 10. . . .

Section 276 makes no provision for exemption if a claim is filed after December 10 of the year for which the exemption is sought. Thus, if a claim is not filed by December 10 then the disabled veterans' exemption for that year is waived (Article XIII, section 6 and section 260).

There is, in our view, an exception in circumstances such as these in which a claimant has filed a timely claim for the exemption, the claim has been denied because of the lack of any Department of Veterans' Affairs determination, and the Department of Veterans' Affairs later issues its determination as of an earlier date, a date prior to the date of the filing of the claim. In such situations, we have been of the opinion that such a claim should be reconsidered in light of the Department of Veterans' Affairs determination and allowed, assuming all other requirements for the exemption are met.

The views expressed in this letter are, of course, only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,



Lou Ambrose  
Tax Counsel

LA:ba

cc: Mr. James Speed, MIC:63  
Mr. Richard Johnson, MIC:64

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