350.0050 **Trusts, Reserved Life Estates and Joint Tenancies**. The disabled veterans' exemption claimed by an eligible veteran or a spouse thereof is not impacted by a subsequent transfer of the property if the transfer is: to a trust, if the veteran or the spouse is the sole present beneficiary or if the trust is revocable; a transfer that creates a future interest but reserves a life estate in the grantor veteran or spouse; or, a transfer that creates a joint tenancy in which the transferor veteran or spouse is one of the joint tenants provided, however, that only the retained joint tenancy interest is eligible for exemption. C 6/25/85; C 10/15/92. (M99-1)

(916) 323-7715

June 25, 1985

Dear

This is in response to your May 30, 1985 letter to this Board wherein you inquired concerning the availability of the Disabled Veterans' Exemption if a disabled veteran's surviving spouse were to deed her property to herself and to her son as joint tenants.

Per your May 9, 1985 letter to the San Diego County Assessor's Office, you stated that a Ms ... is contemplating quit-claiming her residence to her son, she and her son to take title to the property as joint tenants. At the same time, they would enter into and record a Memorandum of Understanding specifying that the son has no present interest in the property but merely would take the property upon her death outside of probate. Thus, you asked whether the proposed transfer together with the recorded Memorandum of Understanding would permit continuation of the exemption for Ms. Kirson.

Assuming the conveyance in joint tenancy, Revenue and Taxation Code Section 62(f) provides that change in ownership shall not include the creation of a joint tenancy interest if the transferor, after the creation, is one of the joint tenants. Thus, the creation of such interest would not constitute a change in ownership for purposes of reassessment.

After the creation of such interest, however, both Ms and her son would be deemed to be equal owners of undivided interests in the entire property, absent any agreement, understanding, etc., to the contrary. In that event, only Ms. 50 percent interest in the property would be eligible for the exemption. See in this regard our February 9, 1976 Letter to Assessors No. 76/27, Disabled Veterans' Exemption - Partial Ownership Of Residence, copy enclosed.

The letter was written when assessed value was 25 percent of full value (now assessed value and full value are identical), but the principal is the same: only that portion of property owned by a disabled veteran or his or her surviving spouse is eligible for the exemption.

Were M[illegible]n and her son also to enter into and record a Memorandum of Understanding of the kind contemplated and providing that the son will have no equitable interest in the property so long as Ms. Kirson is living, however, she would still be considered to be the owner of the entire property, and the entire property would be eligible for the exemption. In this regard, Property Tax Rule 462(k) provides:

> "(2) Deed presumption. When more than one person's name appears on a deed, there is a rebuttable presumption that all persons listed on the deed have ownership interests in property. When the presumption is not rebutted, any transfer between the parties will be a change in ownership. In overcoming this presumption, consideration may be given to, but not limited to, the following factors:
>
> (A) The existence of a written document executed prior to or at the time of the conveyance in which all parties agree that one or more of the parties do not have equitable ownership interests.
>
> * * *"

Such, of course, is contingent upon Ms. Kirson continuing to own the property, to use it as her principal place of residence, and to meet all the requirements for the exemption.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM:fr
Enclosure

cc: Mr. Gregory J. Smith, San Diego County Assessor
bc: Mr Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Mr. William Grommet
Legal Section

Disabled Vet ownership

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 323-7713

October 15, 1992

Re: Transfer of residence with Disabled Veteran's Exemption.

Dear Mr. [illegible]

This is in response to your letter of September 16, 1992, in which you request our opinion regarding the change in ownership and exemption implications of three alternative proposed transfers of a residence currently receiving the Disabled Veterans Exemption, Cal. Const. Art. XIII, Section 4(a), and Revenue and Taxation Code Section 205.5.

You have provided the following set of facts for purposes of our analysis:

Taxpayer (T) is the spouse of a disabled veteran, now deceased. As such, she has annually claimed the Disabled Veterans' Exemption under Rev. & Tax. Code Section 205.5 for the property she owns and occupies as her primary residence. T is currently considering an estate plan which proposes the following three alternatives for the transfer of her residence:

Alternative 1. Transfer the property to herself as trustee of a revocable trust for her benefit;

Alternative 2. Transfer the property by revocable deed to her beneficiary as the grantee and reserving a life estate to herself;

Alternative 3. Transfer the property to her beneficiary by a deed conveying an undivided joint tenancy interest.

T wishes to know 1) the change in ownership and tax consequences of each of these alternatives, and 2) the effect of each alternative on her ownership interest in the residence for purposes of claiming the Disabled Veterans' Exemption after the transfer.

LAW AND ANALYSIS

The Disabled Veterans' Exemption in Rev. & Tax. Code Section 205.5(d) provides that "property which is owned by the veteran's unmarried surviving spouse", includes:

> (2) Property owned by the veteran or the veteran's spouse as separate property.
>
> (4) Property owned by the veteran's unmarried surviving spouse with one or more other persons to the extent of the interest owned by the veteran's unmarried surviving spouse.

Thus, as the unmarried surviving spouse, T is entitled to the exemption on her principal place of residence for her life to the extent of her fee or beneficial ownership interest. If she transfers her fee or beneficial ownership interest to another, she can no longer be regarded as the owner of the property for purposes of the Disabled Veterans' Exemption.

For change in ownership purposes, Rev. & Tax. Code Section 60 defines "change in ownership" as a "transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest."

However, with regard to transfers to a trust as proposed in Alternative 1, Section 62(d) excludes from a change in ownership:

> Any transfer by the trustor,...into a trust for so long as (1) the transferor is the present beneficiary of the trust, or (2) the trust is revocable.

Similarly, with respect to the transfer of property as proposed in Alternative 2 to one's beneficiary by a revocable grant deed reserving a life estate in the grantor, Section 62(e) excludes from a change in ownership:

> Any transfer by an instrument whose terms reserve to the transferor an estate for years or an estate for life; however, the termination of such an estate for years or

estate for life shall constitute a change in ownership, except as provided in subdivision (b) of Section 65.

With regard to transfers to a joint tenancy, as proposed in Alternative 3, Section 62 (f) excludes from a change in ownership:

> The creation or transfer of a joint tenancy interest if the transferor after the creation or transfer, is one of the joint tenants as provided in Section 65 (b).

Section 65, subdivisions (a) and (b) state that

> (a)...the creation, transfer, or termination of any joint tenancy is a change in ownership except as provided in this section, Section 62, and Section 63. Upon a change in ownership of a joint tenancy interest, only the interest or portion which is thereby transferred from one owner to another owner shall be reappraised.
>
> (b) There shall be no change in ownership upon the creation or transfer of a joint tenancy interest if the transferor or transferors, after such creation or transfer, are among the joint tenants.

Change in Ownership Consequences

Based on the foregoing, in our opinion, the three proposed transfers of T's property would result in the following change in ownership consequences:

> **Alternative 1.** The transfer of the residence to herself as trustee of a revocable trust for her benefit would not constitute a change in ownership, since T retains 100 percent of the present interest and beneficial use, as provided in Section 62(d). Please note, however, that a change in ownership of trust property does occur to the extent that persons other than herself are the present beneficiaries of the trust or at the time the trust becomes irrevocable. (For further reference, see Title 18 of the California Code of Regulations, Section 462(i)(2)(A),(B).)
>
> **Alternative 2.** Transfer of the residence by revocable grant deed to T's beneficiary as the grantee but reserving a life estate for T such that T would retain 100 percent of the present interest and the beneficial use of the residence, also does not appear to constitute a change in ownership.

Such a transfer is not within the definition of "change in ownership" under Section 60 and is specifically excluded from change in ownership under Section 62(e).

Alternative 3. Transfer of the residence by means of the execution and recordation of a deed conveying an undivided joint tenancy interest in the property, again, does not constitute a change of ownership for purposes of reassessment under Section 62(f) and Section 65(b). However, as provided in California Code of Regulations Section 462(c)(2), after the creation of such interest, **both** T and her joint tenant(s) would be deemed to be equal owner(s) of undivided interests in the entire property.

Disabled Veterans' Exemption Consequences

For purposes of retaining eligibility and claiming the Disabled Veterans' Exemption, once granted, the exemption remains in effect until there is a change in title to the property, or the "owner" (or spouse) no longer occupies the property as his/her principal place of residence. In the following analysis of the alternative transfers proposed, we conclude that T would continue to hold either all or a portion of the fee or beneficial ownership interest in the residence in each instance, and would thereby retain in full or in part the Disabled Veterans' Exemption.

Alternative 1. The transfer of the residence to herself as trustee of a revocable trust for her benefit would result in the continuation of the full Disabled Veterans' Exemption because, as beneficiary of the trust, T would continue to own 100% of the beneficial interest in the property.

Alternative 2. Transfer of the residence to her beneficiary by revocable grant deed but reserving a life estate for herself would also permit the continuation of the full exemption for T because, as the holder of a life estate, she would continue to be the 100% beneficial owner of the property during her lifetime.

Alternative 3. In the event of the transfer of an undivided joint tenancy interest in the residence, only 50 percent of the property would be eligible for the exemption, since T would own only a 50% fee interest. See Letter to Assessors, No. 76/27, Disabled Veterans' Exemption - Partial Ownership of Residence, copy enclosed.

The foregoing conclusions regarding the Disabled Veterans' Exemption are contingent, of course, upon T continuing to own the property, to use it as her principal place of residence, and to meet all the requirements for the Disabled Veterans' Exemption as provided in the statutes.

The views expressed in this letter are advisory only, and are **not** binding upon the assessor of any county. Please consult the Fresno County Assessor concerning these alternatives and conclusions, since he is the local government official directly responsible for administering the change in ownership statutes and rules and the Disabled Veterans' Exemption in Fresno County.

Our intention is to provide courteous, helpful and timely responses to inquiries such as yours. Suggestions that help us to accomplish this objective are appreciated.

Very truly yours,

Kristine Cazadd

Kristine Cazadd
Tax Counsel

cc: Honorable William C. Greenwood
Fresno County Tax Assessor
Mr. John W. Hagerty
Mr. Verne Walton

Attachment

DVet.ltr

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 1799, SACRAMENTO, CALIFORNIA 95808)
Tel: (916) 445-4982

#76/27

February 9, 1976

TO COUNTY ASSESSORS:

DISABLED VETERANS' EXEMPTION - PARTIAL OWNERSHIP OF RESIDENCE

The extent of the disabled veterans' exemption allowance is sometimes questionable when the residence is owned by the veteran and a person or persons other than his or her spouse. Applicable parts of Section 205.5 read:

"(d) This exemption includes the home of such a person owned in either joint, common or community interest with his or her spouse...."

"(e) ...no property tax exemption may be claimed by any other person with respect to the same home for which an exemption has been granted...."

The exemption applies on that part of the assessed value of the residence that does not exceed ten thousand ($10,000) assessed value, or forty thousand ($40,000) full value. Here are several examples to illustrate the correct application of the exemption.

1. A disabled veteran and his wife are the owner-occupants of a residence with a nine thousand dollar ($9,000) assessed value, or thirty-six thousand dollar ($36,000) full value. A full $9,000 assessed value exemption is allowable on the property.

2. A disabled veteran, his wife, and his mother own the property as tenants in common and are the occupants of a residence with a nine thousand ($9,000) assessed value. As the veteran and spouse own 2/3 of the property, $6,000 of the property is exempt.

3. A disabled veteran is a part owner and occupant of a home valued at $80,000. He has a 50% interest in the property. He shares the home with another owner-occupant (not his spouse) who has a 50% interest. The computation of the exemption is as follows:

Market Value	$80,000
Assessed Value	20,000
Veteran's 50% interest	10,000
Allowable exemption	10,000