

# Disabled Military Veterans' Real Property Tax Exemption

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**\*Important Notation: On July 15, 2011, the Attorney General issued an opinion that provides a conclusion different from that set forth in the following Issue Brief under the paragraph entitled "Level of Disability." Here is a link to the Attorney General's opinion:**

<http://www.oag.state.va.us/Opinions%20and%20Legal%20Resources/Opinions/2011opns/11-061-OBannon%20et%20al.pdf>

### Constitutional Amendment

The 2009 and 2010 Sessions of the General Assembly passed identical joint resolutions proposing to amend the Constitution of Virginia to provide for an exemption from the local real property tax for certain military veterans determined by the U.S. Department of Veterans Affairs to have a one hundred percent service-connected disability. (See HJR 648/SJR

275 in 2009 and HJR 33/SJR 13 in 2010). The resolutions also provided that the property tax exemption is available to a surviving spouse of a veteran who was eligible for the exemption so long as the surviving spouse does not remarry and continues to occupy the real property as his or her principal place of residence.

The identical resolutions having passed in 2009 and 2010 by a majority of the members elected to each house of the General Assembly, the proposed constitutional amendment was submitted to the voters in November 2010 in accordance with Article XII, Section 1 of the Constitution of Virginia. The November 2010 ballot asked those voting in the election if Article X of the Constitution of Virginia should be amended as follows:

#### ARTICLE X

#### TAXATION AND FINANCE

*Section 6-A. Property tax exemption for certain veterans.*

*Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, shall exempt from taxation the real property, including the joint real property of husband and wife, of any veteran who has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a one hundred percent*



*service-connected, permanent, and total disability, and who occupies the real property as his or her principal place of residence. The General Assembly shall also provide this exemption from taxation for real property owned by the surviving spouse of a veteran who was eligible for the exemption provided in this section, so long as the surviving spouse does not remarry and continues to occupy the real property as his or her principal place of residence.*<sup>1</sup>

The voters ratified the amendment for the disabled military veterans' real property tax exemption by a large margin. HB 149 and SB 31, passed by the 2010 General Assembly, were the bills that actually directed the Virginia State Board of Elections to place the constitutional amendment on the November 2010 ballot. These identical bills provided that the constitutional amendment, if ratified, would become effective on January 1, 2011.

As can be seen from the language of the amendment, the Constitution of Virginia required implementation of the tax exemption by general law adopted by the General Assembly. As a result, the 2011 Regular Session of the General Assembly introduced and ultimately adopted identical bills implementing the constitutional amendment. (See HB 1645/SB 987, 2011 Virginia Acts of Assembly Chapters 769 and 840.)<sup>2</sup>

## **Level of Disability**

The legislation mirrored the language set forth in the constitutional amendment by specifying that, in order to qualify, a veteran must have received a rating from the U.S. Department of Veterans Affairs as having a 100 percent service-connected,

permanent, and total disability. As the Constitution of Virginia requires that all property tax exemptions be set forth in the Constitution of Virginia, the General Assembly – or a locality – is constrained from expanding the class of veterans who may qualify for the exemption to include veterans who may have a severe, but less than 100 percent, disability, or to include veterans who have been declared 100 percent unemployable but not 100 percent disabled.

## **Surviving Spouses**

As previously noted, the constitutional amendment allows the surviving spouse of a disabled veteran to claim the tax exemption. The source of many questions concerning the new property tax exemption is the fact that the implementing legislation specifies that the exemption would only apply to the surviving spouse of a veteran who dies on or after January 1, 2011. This provision was adopted in accordance with the language of the constitutional amendment. The constitutional amendment was ratified in November 2010 and became effective on January 1, 2011, for all tax years beginning on or after January 1, 2011. The amendment provides that the property tax exemption is available to "the surviving spouse of a veteran **who was eligible** for the exemption" (emphasis added). Disabled veterans would only be eligible for the exemption on or after January 1, 2011; if a veteran passed away prior to January 1, 2011, he was not eligible for the exemption, and therefore neither is his surviving spouse.

While the implementation of this provision for surviving spouses may create difficult situations, unfortunately the General Assembly does not have the

authority to broaden the scope of a property tax exemption in cases where the plain language of the Constitution of Virginia limits the exemption; therefore, an additional constitutional amendment would be required to allow expanded participation by surviving spouses of veterans who died prior to January 1, 2011.

## **Implementation by Localities**

The 2011 legislation establishes in the Code of Virginia the process and procedures for applying for the exemption, thus creating consistency from locality to locality in implementing the exemption. A qualified veteran must provide to the commissioner of revenue of the locality an affidavit or written statement (i) setting forth his name and spouse's name, if applicable, (ii) indicating whether the property is jointly owned, and (iii) certifying that the property is the veteran's principal place of residence. The veteran must also provide documentation from the U.S. Department of Veterans Affairs indicating that the veteran has a 100 percent, service-connected, permanent, and total disability. The veteran is only required to file this information once (as opposed to filing annually), unless the veteran's principal place of residence changes.

## **Amount of Property Exemption**

Finally, the legislation addresses a technical issue as to how much property may be exempted from taxation. While the constitutional amendment specified that the exemption applied to the veteran's "principal place of residence," it did not specify whether this meant only the actual

dwelling, or included the yard around the dwelling or any additional acreage. Again, in an attempt to provide consistency in application from locality to locality, the General Assembly specified that the exemption would apply to the dwelling and up to one acre of land upon which it is situated. The only exception to this rule is if the locality already provides an exemption or deferral of real property taxes of more than one acre of land for the elderly or disabled pursuant to Article 2 (§ 58.1-3210 et seq.) of Chapter 32 of Title 58.1 of the Code of Virginia. In that instance, the locality must exempt the same amount of property for disabled veterans.

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<sup>1</sup>The amendment to the Constitution of Virginia became effective January 1, 2011, and is available online at <http://legis.state.va.us/Laws/search/constitution.htm#10S6a> and will be updated in the Constitutions supplement of the hard copy of the Code of Virginia around July 1, 2011.

<sup>2</sup>Chapters 769 and 840, which became effective April 6, 2011, of the 2011 Acts of Assembly, created a new article in the Code of Virginia (Article 2.3 (§ 58.1-3219.5 et seq.) of Chapter 32 of Title 58.1 of the Code of Virginia). The online and hard copy of the Code of Virginia will reflect this change around July 1, 2011. The text of the language for the new article can be viewed now through the Legislative Information System at <http://lis.virginia.gov/cgi-bin/legp604.exe?111+ful+CHAP0840> and <http://lis.virginia.gov/cgi-bin/legp604.exe?111+ful+CHAP0769>.

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