

MVBA BULLETIN

H.B.3613 and the Disabled Veterans' Homestead Exemption

July 15, 2009

Although the legislature passed several property-tax bills in its recent regular session, House Bill 3613 seems to be generating the most interest so far. That bill does three things: 1) it creates a new exemption for the homesteads of some disabled veterans; 2) it adjusts the amounts of the regular disabled veterans' exemption for veterans with different degrees of disability; and 3) it requires that a residence homestead be appraised solely on the basis of its value as a homestead, regardless of whether that is the property's highest and best use.

The new homestead exemption is added to the Tax Code as §11.131, and its language is deceptively simple. The new section provides as follows:

Sec. 11.131. RESIDENCE HOMESTEAD OF 100 PERCENT OR TOTALLY DISABLED VETERAN.

- (a) In this section:
 - (1) "Disabled veteran" has the meaning assigned by Section 11.22.
 - (2) "Residence homestead" has the meaning assigned by Section 11.13
- (b) A disabled veteran who receives from the United States Department of Veterans Affairs or its successor 100 percent disability compensation due to a service-connected disability and a rating of 100 percent disabled or of individual unemployability is entitled to an exemption from taxation of the total appraised value of the veteran's residence homestead.

The overall purpose of the bill is clear; it completely exempts the residence homestead of a qualifying disabled veteran. In that respect, the homestead is treated like other totally exempt properties such as churches and city parks. The devil, however, is in the details. Our offices have received many questions from clients concerning the details of the new exemption. This Bulletin attempts to answer the ten most common questions.

1. Will the new exemption require an election to amend the Texas Constitution?

No. In 2007, the voters amended Art. VIII, §1-b(i) to give the legislature the authority to exempt "all or part of the market value of the residence homestead of a disabled veteran who is certified as having a service-connected disability with a disability rating of 100 percent or

totally disabled.” The legislature “may provide additional eligibility requirements for the exemption.” Legislators had all the authority they needed to enact the new exemption, and there will be no election.

2. When does the new exemption take effect?

It is in effect now. The bill expressly makes the exemption applicable to the 2009 tax year.

3. Does a disabled veteran have to apply for the exemption?

Yes. The application deadline, however, is the same one that applies to general homestead exemptions and to the regular disabled veterans’ exemption, i.e., one year after the delinquency date for the tax year in question. Thus, a disabled veteran can apply for the 2009 exemption of his homestead anytime before February 1, 2011. This means that 2009 appraisal rolls and tax rolls are more likely to shrink over time than the rolls for earlier years. Taxing units should anticipate that shrinkage. When a disabled veteran applies for and receives the new exemption in one year, he will not have to apply again in future years. His homestead will continue to receive the exemption without the need for a new application.

4. Does the qualifying disabled veteran have to own the property as his homestead on January 1 of the tax year in order to receive the exemption for that year?

Yes. The bill does not include any exception to the general rule found in §11.42, the rule that a property must qualify on January 1 in order to receive an exemption for the tax year.

5. Explain the disability requirements.

A veteran applying for the new exemption should be able to show an appraisal district documents from the V.A. that establish two things. First, the documents must show that the veteran is receiving 100% disability compensation due to a service-connected disability. Second, the documents must show that the veteran has a disability rating of 100% **or** that the V.A. has determined him to be unemployable. For example, a veteran qualifies if the V.A. has given him a disability rating of 80%, but he qualifies for 100% disability compensation because he is unemployable. Sometimes a document from the V.A. will say that a veteran has a disability rating of less than 100% but that he his being compensated at a “higher level.” This is not enough information. The veteran should seek additional documentation from the V.A. to establish that he is unemployable and that he is receiving 100% disability compensation.

6. Suppose a qualified disabled veteran dies while he is receiving the exemption. Will the exemption continue in effect for the benefit of his surviving spouse or his children?

No. Unlike the regular disabled veterans’ exemption, the new homestead exemption does not benefit the surviving spouse or minor children of a veteran who dies.

7. Suppose a disabled veteran who qualifies for the new exemption does not own any real property or tangible personal property other than his residence. Will he receive any benefit from the regular disabled veteran's exemption?

No. His residence will be completely tax-exempt as a result of the new exemption. If he does not own any other property that could otherwise be taxed, he will not receive any benefit from the regular disabled veteran's exemption. If the disabled veteran dies and some part of the homestead's value becomes taxable, his surviving spouse can apply for the regular disabled veteran's exemption and apply it to the homestead.

8. If a disabled veteran's homestead qualifies for the new exemption on January 1 but ceases to qualify during the year, will it still receive the full amount of the exemption for that year?

Yes. In many instances, §26.10 requires that taxes be prorated when an exemption is lost, but that rule does not apply to "a residence homestead exemption." Although the new disabled veterans' homestead exemption does not appear with other homestead exemptions in §11.13, it is nevertheless a residence homestead exemption. Therefore, the rule requiring the prorating of taxes does not apply.

9. Is there any age requirement for the new exemption?

No. The disabled veteran's age does not matter. A teenaged disabled veteran who qualified and who owned a homestead could claim the exemption and continue to receive it for the rest of his life, no matter how long he lived. If a young disabled veteran lives with his parents, they might consider deeding their homestead to him in order to qualify for the exemption. This kind of transfer would not be illegal or improper.

10. What happens when a disabled veteran who receives the new exemption moves from one homestead to another?

The new exemption doesn't have a complicated transfer procedure like the one that applies to a senior citizen's tax freeze. When a disabled veteran moves he should notify the appraisal district that appraises his old home so that the district can discontinue the exemption in the next year. The disabled veteran should file a new application with the appraisal district that appraises his new home (see answer to Question 3 above).

If you have other questions about the new exemption or about other new legislation, please let us know. We will be happy to help with any questions that you might have.