

April 2, 2008 Property Tax Exemption for Veterans with a Disability

The Honorable Thomas A. García
New Mexico State Representative
P.O. Box 56
Ocate, NM 87734

Re: Opinion Request – Property Tax Exemption for Veterans with a Disability

Dear Representative García:

You asked whether Article VIII, Section 15 of the New Mexico Constitution, which exempts from taxation the property of veterans with a one hundred percent disability, requires the legislature to enact a law implementing the exemption for each tax imposed against property. According to your request, the only existing statutory provision implementing the constitutional exemption applies to property taxes covered by the Property Tax Code, NMSA 1978, ch. 7, arts. 35-38. As a result, you are concerned that specific legislation is required to exempt the property of veterans with disabilities from property taxes imposed by governmental entities such as flood control districts, county hospital districts, college districts, conservancy districts and solid waste districts.

As discussed below, the constitutional exemption implemented by Section 7-37-5.1 of the Property Tax Code effectively applies to all property taxes in the constitutional sense regardless of whether the taxes are imposed under or outside the Property Tax Code. This makes it unnecessary to enact a separate exemption for veterans with a one hundred percent disability for each property tax.

The New Mexico Constitution's provisions governing taxation generally are found in Article VIII. Article VIII, Section 15 provides, in pertinent part:

The legislature shall exempt from taxation the property ... of every veteran of the armed forces of the United States who has been determined pursuant to federal law to have a one hundred percent permanent and total service-connected disability, if the veteran occupies the property as his principal place of residence.

The legislature has enacted the exemption, referred to as the "disabled veteran exemption," as part of the Property Tax Code. See NMSA 1978, § 7-37-5.1 (2004).

Initially, it is important to note that the exemption from property taxation for veterans with disabilities, like all constitutional limitations on and exemptions from taxation, applies only to "taxes" as that term is used in the constitution. The New Mexico Supreme Court has held that the limitations and exemptions specified in Article VIII of the state constitution do not apply to "special benefit assessments" for improvements that are levied upon property that is specially benefited by the improvements. See Hamilton v. Arch Hurley Conservancy Dist., 42 N.M. 86, 75 P.2d 707 (1938) (preliminary fund assessment by conservancy district was not subject to 20-mill limit under Article

VIII, Section 2 for taxes levied upon property); Lake Arthur Drainage Dist. v. Field, 27 N.M. 183, 199 P. 112 (1921) (drainage district's assessment of property for improvements in proportion to benefits was not a tax for purposes of exemption from tax for state property under Article VIII, Section 3). Special benefit assessments that are not "property taxes" in the constitutional sense include assessments levied by conservancy districts under the Conservancy Act, ch. 73, art. 16 (1927, as amended through 1983) and the Conservancy District-Reclamation Contract Act, 73-18-1 to -24 (1939, as amended through 1995). Because the constitutional tax exemptions, including the exemption under Article VIII, Section 15 for veterans with disabilities, do not apply to special benefit assessments, the legislature would have to enact specific legislation to exempt property from the assessments. See N.M. Att'y Gen. Op. No. 87-7 (absent a specific statutory exemption, state was required to pay levies assessed on state property within a conservancy district).

We can now address the applicability of the disabled veterans exemption to property taxes imposed by laws other than the Property Tax Code. Chapter 7, Article 37 of the Property Tax Code governs the imposition of the property tax. Most of the provisions of Article 37 do not apply to "impositions or levies of taxes on specific classes of property authorized by laws outside of the Property Tax Code...." NMSA 1978, § 7-37-1(A) (1986). The exceptions are provisions that authorize and limit tax rates, which are set by the Department of Finance and Administration. See id.; NMSA 1978, §§ 7-37-7 (2004), 7-37-7.1 (1994).

In particular, Section 7-37-7(C) authorizes, in pertinent part:

- (1) those rates or impositions authorized under provisions of law outside of the Property Tax Code that are for the use of the governmental units indicated in those provisions and are for the stated purpose of paying principal and interest on a public general obligation debt incurred under those provisions of law;
- (2) those rates or impositions authorized under provisions of law outside the Property Tax Code that are for the use of the governmental units indicated in those provisions, are for the stated purposes authorized by those provisions and have been approved by the voters of the governmental unit in the manner required by law....[1]

The rates and impositions described above "shall be on the net taxable value of both residential and nonresidential property allocated to the unit of government specified in the provisions of the other laws." NMSA 1978, § 7-37-7(D). "Net taxable value" is the value of property upon which the tax is imposed and is determined by deducting from taxable value the amount of any exemption authorized by the Property Tax Code." NMSA 1978, § 7-35-2 (E) (1994).

Under Section 7-37-7, property taxes authorized by laws outside of the Property Tax Code are imposed on the taxable value of property, as that term is used in the Code, minus any exemption authorized by the Code. Consequently, the disabled veterans

exemption authorized under Section 7-37-5.1 effectively applies to property taxes imposed under laws other than the Property Tax Code. This makes it unnecessary for the state legislature to enact a separate disabled veterans exemption for each property tax authorized by those other laws.

If we may be of further assistance, please let us know. Your request to us was for a formal Attorney General's Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Sincerely,

ELIZABETH A. GLENN
Assistant Attorney General

cc: Albert J. Lama, Chief Deputy Attorney General

[1] Examples of property taxes authorized outside of the Property Tax Code to which the disabled veterans exemption applies are the ad valorem tax on taxable property within a special hospital district, NMSA 1978, § 4-48A-16 (1987); the property tax on taxable property within a college district, NMSA 1978, § 21-2A-5 (1995); the property tax on all property subject to taxation within a flood control district, NMSA 1978, § 72-18-20 (1986); and the general ad valorem tax on all property subject to property taxation within a solid waste authority, NMSA 1978, § 74-10-27 (1993).