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Taxation and Revenue Department
Tax Information and Policy Office
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Dear Secretary Schardin Clarke:

This is a comment for the record regarding the proposed amendments of 3.6.6 NMAC, in particular to 3.6.6.12 and 3.6.6.1.13 NMAC.

First, a nit: 3.6.6.12C, second paragraph: the "2" should be in parentheses.

Second, why is there a difference in their application between the veteran exemption and the disabled veteran exemption?

Article VIII, Section 5 provides the head of household and veteran exemptions, declaring in part:

... The legislature shall also exempt from taxation the property, including the community or joint property of husband and wife, of every honorably discharged member of the armed forces of the United States and the widow or widower of every such honorably discharged member of the armed forces of the United States, ... [p]rovided, that in every case where exemption is claimed on the ground of the claimant's having served with the armed forces of the United States as aforesaid, the burden of proving actual and bona fide ownership of such property upon which exemption is claimed, shall be upon the claimant.

Section 15 of that same Article provides an exemption for disabled veterans, declaring:

The legislature shall exempt from taxation the property, including the community or joint property of husband and wife, 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 shall also provide this exemption from taxation for property owned by the widow or widower of a veteran who was eligible for the exemption provided in this section, if the widow or widower continues to occupy the property as his principal place of residence. The burden of proving eligibility for the exemption in this section is on the person claiming the exemption.

There are only two substantive differences between these two exemptions. The obvious one is that a disabled veteran (or the veteran's widow claiming through the disabled veteran) must demonstrate a determination of disability under federal law. The second is that a disabled veteran must occupy the property for which the exemption is claimed as the veteran's principal place of residence.

Both exemptions mandate the Legislature to exempt (qualifying) property from taxation. There is no mention of any authorized distinction between property taxes imposed under the Property Tax Code versus those imposed under other laws.

So why the difference in treatment regarding property tax obligations generated by the Property Tax Code and those generated under other laws? You are proposing to amend 3.6.6.12 and 3.6.6.13 NMAC in relevant part as follows:

3.6.6.12

A The veteran exemption applies to property taxes imposed by laws other than the Property Tax Code, such as [gives several examples]. **The veteran exemption is not effective against** impositions or levies of taxes on specific classes of property authorized by laws outside the property tax code or impositions of special benefit assessments authorized by laws outside the Property Tax Code [~~such as conservancy district assessments~~].

3.6.6.13

A. (1) The disabled veteran exemption applies to property taxes imposed by laws other than the Property Tax Code, such as [repeats the above examples] [~~The disabled veteran exemption is not effective against impositions of special benefit assessments authorized by laws outside the Property Tax Code, such as conservancy district assessments.~~]

(2) **The disabled veteran exemption applies to special benefit assessments.** Special benefit assessments are assessments or levies on specific classes of property that are specially benefited by the assessment or levy, rather than general property taxes on all property benefiting all property owners and residents of the taxing district. Special benefit assessments include assessments and levies outside the Property Tax Code, which consists of Articles 35 through 38 of Chapter 7 NMSA 1978.

You may well be correct that the existing regulation unduly restricts the application of the disabled veteran exemption. If so, the same reasoning must apply to the “regular” veteran exemption as well. The constitutional provisions for both on this point are in substance the same.

The proposed changes for 3.6.6.12 and 3.6.6.13 NMAC cannot stand as written. Either both exemptions apply to the impositions outside the Code and special benefit assessments or neither does.

I do not remember why property of veterans was made subject to some “outside” laws and special benefit assessments but not others. It may be that some of those laws and assessments explicitly exempt the property of veterans and others do not. But that really does not make a difference; Article VIII makes veteran-owned property exempt. If court opinions say otherwise, either they are wrong and the restrictions apply to neither exemption or, if correct, the same logic applies to both.

Sincerely

James P O’Neill