



STATE BOARD OF EQUALIZATION  
PROPERTY AND SPECIAL TAXES DEPARTMENT  
450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064  
916 274-3350 • FAX 916 285-0134  
www.boe.ca.gov

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No. 2013/022

TO COUNTY ASSESSORS:

DISABLED VETERANS' EXEMPTION –  
MILITARY WARRIORS SUPPORT FOUNDATION

Recently, we have received several inquiries regarding the availability of the Disabled Veterans' Exemption to a person who has been awarded a mortgage-free home under a Contract for Deed with the Military Warriors Support Foundation (Foundation), if that person qualifies for the exemption in all other respects. Assessors have inquired whether the Disabled Veterans' Exemption may be granted to a qualified claimant as of the execution date of the contract, even though title to the property will remain in the name of the Foundation for three years after the contract date. The answer is yes, provided residency is established within 90 days of the contract date. If residency is established after 90 days of the contract date, the exemption may be granted as of the move-in date.<sup>1</sup>

The Foundation is an Internal Revenue Code section 501(c)(3) non-profit organization that provides services for military veterans. One of the services is to award mortgage-free homes<sup>2</sup> to qualifying veterans (or their unmarried surviving spouses)<sup>3</sup> who have injuries and severe or unique circumstances as a result of engaging in combat in Iraq or Afghanistan. An application for one of these homes must be submitted and when it is awarded, a purchase agreement is entered into through a contract between the Foundation as "seller/landlord" and the veteran as "buyer/tenant." Close of escrow is scheduled to occur three years from the date of the contract, and title to the property remains in the name of the Foundation until the three years have elapsed.

The contract provides that the buyer must fulfill certain requirements, such as participating in three years of family and financial mentoring to assist with transition back to civilian life. During that time, the buyer also pays a deposit of \$50 per month and is responsible for all property, school, and city taxes, unless they are waived by the state. If all the contract requirements are met, escrow may close and title to the home is then transferred to the veteran.

<sup>1</sup> Revenue and Taxation Code section 279, subdivisions (a)(2) and (a)(3).

<sup>2</sup> Typically, such homes were those foreclosed upon by a lending institution, then donated to the Foundation's "Homes 4 Wounded Heroes Program."

<sup>3</sup> The term "veteran" as used herein also refers to unmarried surviving spouses of qualified veterans, as described in subdivision (c) of Revenue and Taxation Code section 205.5.

Revenue and Taxation Code<sup>4</sup> section 205.5 provides for a property tax exemption<sup>5</sup> for property that constitutes the principal place of residence of a veteran who is blind in both eyes, has lost the use of two or more limbs, or who is totally disabled as a result of injury or disease incurred in military service; or the unmarried surviving spouse of such a veteran. The property must be owned by the veteran, the veteran's spouse, or the veteran and the veteran's spouse jointly. Subdivision (d) of section 205.5 describes "property that is owned by a veteran or the veteran's unmarried surviving spouse" to include various types of ownership by the veteran or the veteran's unmarried surviving spouse which would qualify for the tax exemption. Thus, the question at hand is whether the claimant is considered to *own* the property that is subject of the contract.

Court cases<sup>6</sup> have ruled that a sales contract that specifies that certain conditions must be met before conveyance of the property to another party is an executory contract. Such contracts have been held to be conveyances or transfers of real property on the ground that they effectuate a grant of the whole beneficial interest in the property to the buyer, while the seller is left only with the bare legal title. The Board has also previously opined, in the context of an installment sale, that the vendor retains bare legal title as a security interest in the property and the vendee acquires equitable title, as well as possession, resulting in a transfer of the present equitable interest and present beneficial use of the property to the vendee upon the execution of the contract.

Therefore, under the Foundation's program, although legal title does not transfer to the veteran until three years after the execution of the contract, the terms of the contract demonstrate that beneficial ownership of the property is transferred to the buyer from the time of the execution of the contract and the buyer is considered to *own* the property for tax purposes at that time. If the contract is not part of any recorded documents or included as an attachment to a *Preliminary Change of Ownership Report* (indicating the Foundation as owner of the property), the assessor is entitled to request a copy in order to rebut the presumption that the owner of legal title is also the owner of beneficial title.<sup>7</sup> Therefore, we advise that the contract be requested as pertinent information for the assessor's consideration.

If you have any questions regarding this exemption, please contact the County-Assessed Properties Division at 1-916-274-3350.

Sincerely,

/s/ David J. Gau

David J. Gau  
Deputy Director  
Property and Special Taxes Department

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<sup>4</sup> All statutory references are to the Revenue and Taxation Code unless otherwise specified.

<sup>5</sup> The exemption is for \$100,000 unless the veteran's household income does not exceed \$40,000, in which case, the exemption is for \$150,000. These figures are adjusted for the relevant assessment year; Revenue and Taxation Code section 205.5, subdivisions (a), (g), and (h).

<sup>6</sup> *Jackson v. Torrence* (1890) 83 Cal.521; *Orange Cove Water Co. v. Sampson* (1926) 78 Cal.App.334, 341.

<sup>7</sup> Evidence Code section 662.