

[Senate Bill 1458](#) (Bates)

Date: 04/06/16

Program: Property Taxes

Sponsor: BOE Member Runner

Revenue and Taxation Code Section 205.5

Effective: Upon enactment

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Summary: Expands disabled veterans' exemption eligibility by changing the requirement that a veteran's character of discharge from military service be under "honorable" conditions to a lower threshold of under "other than dishonorable" conditions.

Summary of Amendments: The amendments since the last analysis clarify that to receive the disabled veterans' property tax exemption, the USDVA must have determined that a veteran with an Other Than Honorable or Bad Conduct military discharge is eligible for federal health and medical benefits.

Purpose: According to the author, the purpose of the bill is to allow previously barred 100% disability-rated veterans, currently receiving United States Department of Veterans Affairs (USDVA) disability compensation for service-connected injuries, to receive the California's disabled veterans' property tax exemption.

Fiscal Impact Summary: Annual revenue loss of \$126,880 for every 100 disabled veterans newly qualified.

Existing Law: The California Constitution authorizes two property tax exemptions for persons who have served in the military:

- **Disabled Veterans' Exemption.**¹ The disabled veterans' exemption applies to the home of a person who because of an injury incurred in military service, is totally disabled, has lost the use of multiple limbs, or is blind.
- **Veterans' Exemption.**² The veterans' exemption applies to any property owned by a person who serves or has served in the military. However, over time, this exemption has become effectively obsolete.³

Under federal law, [USDVA benefits and services](#) provided to a veteran depend on the veteran's character of discharge from military service. A veteran with an Honorable or General (under honorable conditions) is eligible for benefits. However, a veteran with an Other Than Honorable (OTH), or Bad Conduct discharge may be eligible for benefits on a case by case basis after an USDVA investigation.

California's law for disabled veterans' exemption eligibility requires the person's character of discharge to be under "honorable" conditions. The statute implementing the California Constitution's *disabled veterans' exemption* as provided in Section 4 of the Constitution defines "veteran"⁴ by cross reference to the *veterans' exemption* found in Section 3 of the Constitution.⁵ The veterans' exemption in Section 3 of the Constitution requires a person to be serving in or to have served in and have been discharged under *honorable* conditions from service.⁶ But, the disabled veterans' exemption in Section 4 of the

¹ [Section 4\(a\)](#) of Article XIII of the California Constitution. The exemption also extends to the home of the person's spouse, including an unmarried surviving spouse.

² [Section 3\(o\)](#) of Article XIII of the California Constitution.

³ Only two veterans in California currently qualify for the Veterans' Exemption. Any person who owns property worth more than \$5,000 if single or \$10,000 if married is ineligible. If a person owned a home, like a mobilehome, the homeowners' exemption provides greater tax savings. (See Comment 5.)

⁴ RTC Section 205.5(b)

⁵ Section 3(o) of Article XIII of the California Constitution

⁶ [Section 3\(o\)](#) of Article XIII of the California Constitution.

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Constitution does not impose an eligibility requirement related to the person's character of discharge. It only requires that a person be "totally disabled" as a result of military related service.⁷

Proposed Law: This bill eliminates the constitutional cross-reference defining "veteran" for purposes of Section 4 of the Constitution (*the disabled veterans' exemption*) based on the Section 3 definition of "veteran" (*the veterans' exemption*). Instead, the bill defines "veteran" using the same terms found in Section 3 but changes the character of the discharge from military service requirement from "honorable" conditions to "other than dishonorable" conditions. This allows 100% disabled veterans with Other Than Honorable (OTH) or Bad Conduct military discharges to potentially qualify, but only if the USDVA determines they are eligible for federal health and medical benefits.

Effective Date. As a tax levy, this bill is effective immediately upon enactment.

In General: California law provides qualified disabled veterans and their unmarried surviving spouses with a property tax exemption that applies to their home's assessed value. Exemption eligibility provisions require that the claimant obtain a USDVA disability rating that either (1) rates the veteran's disability at 100% or (2) rates the veteran's disability compensation at 100% because the veteran is unable to secure and maintain gainful employment.

The law also allows surviving spouses to receive the exemption if the spouse's death was service-connected. To be eligible for the exemption, surviving spouses must receive a USDVA determination that the spouse's death was service-connected. A USDVA determination is necessary for (1) active duty personnel deaths (i.e., the service person was not a "veteran") and (2) veterans without a 100% rating when alive, but whose cause of death is deemed service-connected. Surviving spouses of veterans with a 100% disability rating during their lifetime continue to receive the exemption after the veteran's death so long as they do not remarry.

Qualification	Basic Exemption Amount	Lower Income Exemption Amount <i>Income Limit</i> \$40,000 adjusted for inflation \$57,258
<p style="text-align: center;">Disabled Veteran</p> <ul style="list-style-type: none"> • Disability Rating = 100% • Disability Compensation = 100% • Blind • Lost use of Two or More Limbs <p style="text-align: center;">Spouse of Military Personnel</p> <ul style="list-style-type: none"> • Surviving Spouse: Disabled Veteran • Surviving Spouse: Active Duty Death • Surviving Spouse: Posthumous service-connected death finding 	<p>\$100,000 adjusted for inflation</p> <p>\$127,510</p>	<p>\$150,000 adjusted for inflation</p> <p>\$191,266</p>

Background: There are five different types of discharges from active duty: Honorable, General (under honorable conditions), Other Than Honorable conditions (OTH), Bad Conduct, or Dishonorable. Generally, to receive [disability compensation](#) benefits from the USDVA requires an Honorable or a General (under honorable conditions) discharge. But, it is possible for a person with an OTH and Bad Conduct discharge to receive disability compensation if, after an investigation by the USDVA, which administers veteran benefits, the USDVA finds that the OTH or Bad Conduct discharge was not "under conditions other than dishonorable" and authorizes disability compensation benefits.

The Senate Committee on Veterans Affairs [legislative analysis for SB 1458](#) explains these issues in detail, a portion of which is excerpted below:

⁷ [Section 4\(a\)](#) of Article XIII of the California Constitution.

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Types of Military Discharges. The military separates its personnel from active service by formally discharging them. Discharges may be either administrative or punitive. Each of the five different discharge statuses is determined by the characterization of an individual's service. The character of service slides along a scale with "honorable" at the high end and "dishonorable" at the low end.

The types of discharges fall under one of two categories: "administrative" or "punitive." Punitive discharges are reserved for the most negative cases and imposed only by special and general courts martial. Administrative separations cannot be awarded by a court-martial and are not punitive in nature. Enlisted personnel may be administratively separated with a characterization of service or a description of separation. Administrative discharges include:

- 1) *Honorable*. This is the most common discharge status. It presumes creditable service and good behavior. All service members will earn an Honorable Discharge unless they experience significant problems and receive a lower type of discharge.
- 2) *General (under honorable conditions)*. Sometimes referred to as a "General Discharge," it is granted if an individual's commander determines that the service has been generally honest and faithful, even if the person ran into some trouble. General Discharges are given for a variety of reasons, including failure to progress in training; failure to maintain military standards in appearance, weight, or fitness; or for disciplinary infractions, including drug or alcohol abuse.
- 3) *Other than Honorable*. An "OTH" discharge usually is given when an individual's service represents a broader pattern of departure from the conduct and performance expected of all military members. It can result from notable drug or alcohol problems, but also can be based on other misconduct, such as abuse of authority, fraternization, or a pattern of continued misconduct. OTH discharges bar the individual from reenlisting into any component of the armed forces, including the military reserves and National Guard.

Punitive discharges are authorized punishments of courts-martial and can only be imposed as an approved court-martial sentence following an individual's conviction for violating the Uniform Code of Military Justice. There are two types of punitive discharges:

- 1) *Bad Conduct Discharge*. This can be imposed by both special and general courts-martial. This discharge is usually given for convictions of crimes such as absent without leave, drunk on duty, driving while under the influence, adultery, writing bad checks, and disorderly conduct.
- 2) *Dishonorable Discharge*. This is the worst type of military discharge a service member can receive, and can be imposed only by a general court-martial. In most cases, a Dishonorable Discharge also involves being sentenced to serve time in a military prison.

Commentary:

1. **Some California disabled veterans with 100% service connected disability ratings and disability compensation are denied the disabled veterans' exemption authorized under the Constitution.** Under current law, disabled veterans receiving compensation from the federal government for service connected injuries at the 100% disability level are ineligible for California's disabled veterans' property tax exemption because the veteran was not discharged from military service under honorable conditions (i.e., Honorable or General (under honorable)).
2. **The April 6, 2016 amendments incorporate suggestions made by the Senate Committee on Veterans Affairs.** The amendments clarify that, to receive the property tax exemption, a person who was discharged under other than dishonorable conditions (i.e., OTH and Bad Conduct), must have received a USDVA determination of eligibility for federal veterans' health and medical benefits.
3. **Military Discharges.** The Senate Veterans Affairs Committee explains that OTH and Bad Conduct discharges lack the broad presumptive eligibility for most of the benefits enjoyed by the Honorable and General (Under Honorable Conditions) discharges. When recipients of OTH and Bad Conduct

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discharges claim federal benefits, the USDVA formally investigates and adjudicates the claims. Thus, a person that has an OTH or Bad Conduct discharge is initially barred from basic eligibility for federal benefits. But the circumstances surrounding those discharges may leave the door open for the USDVA, as administering agency of benefits, to make its own character of discharge determination in order to assess eligibility. The USDVA reviews facts and circumstances surrounding the incident(s) that led to the discharge, as reported by the military, as well as any supporting evidence furnished by the claimant or obtained from third parties. On a case-by-case basis, USDVA determines whether the incidents that led to the discharge may be found to have been “under conditions other than dishonorable,” and thus whether basic eligibility for USDVA benefits can be established.

4. **This bill will align state-provided benefits with federally-provided benefits.** This bill changes the eligibility standard from a discharge under *honorable* conditions to a discharge under *other than dishonorable* conditions provided the USDVA has approved the granting of health and medical benefits.
5. **Exemption administration.** When assessors administer the exemption, they cannot grant the exemption to a 100% disabled veteran when the necessary document to support the exemption claim, the [Certificate of Release or Discharge from Active Duty](#) (DD Form 214), states that the character of service is “under other than honorable conditions.” From time to time, disabled veterans with OTH discharges contact the BOE concerning their inability to obtain California’s property tax exemption even though they are receiving all federal benefits. Additionally, county assessor staff contact the BOE to question this issue and confirm that they must deny the disabled veteran’s claim.
6. **Veterans with post-traumatic stress disorder.** The current standard in law is particularly an [issue](#) for veterans suffering from [post-traumatic stress disorder](#) (PTSD). These veterans are more likely to have been discharged under OTH or Bad Conduct, because of actions related to their PTSD with the USDVA allowing federal benefits after its investigation.
7. **The California Constitution’s disabled veterans’ exemption does not condition exemption eligibility on a veteran’s character of discharge from the military.** This is a statutory requirement created by the cross-reference definition to the unrelated constitutional provision for the veterans’ exemption. Moreover, the veterans’ exemption is effectively obsolete. The veterans’ exemption of \$4,000 in assessed value predates the homeowners’ exemption of \$7,000. After the homeowners’ exemption was created, home-owning veterans transitioned to that exemption due to greater savings. Only veterans who don’t own a home and own other taxable property, like a boat or business personal property, would claim the veterans’ exemption. But, because of its wealth cap limitations of \$5,000 or \$10,000, only two people in the state qualify. Since the wealth cap is in the Constitution, it can’t be raised without a constitutional amendment.
8. **The new veteran definition.** This bill amends into the statute the same definition as existed in the constitution but changes the character of discharge from “honorable” conditions to “other than dishonorable” conditions. Additionally, the USDVA will have determined that the person is eligible for health and medical benefits as evidenced by the persons USDVA 100% disability rating or 100% disability compensation.
9. **For ease of administration, it might be preferable to delay the operative date to coincide with the lien date.** As a tax levy, this bill would take effect immediately.
10. **Prospective application.** For clarity, the bill should state that the change in exemption eligibility is effective prospectively as of a specific date.
11. **What disability rating is required to qualify?** The law defines total disability as meaning that the USDVA has issued the veteran a 100% disability rating or a 100% disability compensation rating for unemployability.⁸

⁸ [RTC Section 205.5\(e\)](#)

12. **How much is the exemption?** The exemption amount depends upon the claimant's income. For the 2016-17 fiscal year, for persons with household incomes below \$57,258, the exemption amount is \$191,266. For all other eligible persons, the exemption amount is \$127,510.⁹
13. **How many homes have been granted the disabled veterans' exemption?** For 2015, there were 37,653 exemptions granted to eligible claimants: 33,196 basic exemptions and 4,457 lower income exemptions. The counties with the most disabled veterans' exemptions in descending order include: (1) San Diego: 5,391; (2) Riverside: 3,732; (3) Sacramento: 2,422; (4) San Bernardino: 2,373; (5) Los Angeles: 2,092; (6) Solano: 1,764; (7) Orange: 1,691; (8) Contra Costa: 1,147; (9) Monterey: 990; and (10) Fresno: 959.
14. **Related Legislation.** [SB 1183](#) (Bates) and [AB 1556](#) (Mathis) fully exempts from property tax the home of any person eligible for the disabled veterans' exemption. [SB 1104](#) (Stone) fully exempts the home of a disabled veteran from property tax and prohibits any future Proposition 13-related inflation adjustments to the assessed value of homes of honorably discharged veterans over the age of 65.

Administrative Costs: BOE would incur absorbable costs to modify forms, publications, and website materials.

Revenue Impact:

Background, Methodology, and Assumptions. The law provides a basic exemption amount of \$100,000, but increases that amount to \$150,000 if the claimant's household income does not exceed \$40,000. All values are adjusted for inflation. For fiscal year 2016-17, the basic exemption amount is \$127,510. The lower income exemption amount is \$191,266 for claimants with a household income below \$57,258.

It is difficult to determine how many additional veteran-owned homes will qualify for an exemption under this bill. Using data from both the U.S. Census and the USDVA, staff has determined the number will be small in comparison to the over 37,000 claimants currently qualified. Since we cannot estimate the total number of additional claims, we will calculate revenue loss based on a per 100 basis. Historically, 90% of exemption claims granted are at the basic exemption level, and 10% are at the lower income exemption level. Additionally, newly qualifying claimants would receive this relief in lieu of the standard \$7,000 homeowners' exemption they are currently receiving.

Accordingly, we can calculate the annual revenue loss for every 100 new claimants as:

	Dis. Vet. Ex.	Subtract Standard H.O. Ex.	Net Ex.	Tax Rate	Tax Savings Per Home	Additional Homes	Annual Revenue Loss Per 100 Addt'l Homes
Basic	\$127,510	\$7,000	\$120,510	1%	\$1,205	90	\$108,450
Lower Income	\$191,266	\$7,000	\$184,266	1%	\$1,843	10	\$18,430
Total						100	\$126,880

Revenue Summary. For every 100 additional qualifying disabled veteran-owned homes, this bill would result in an annual revenue loss of \$126,880.

Qualifying Remarks. This revenue estimate does not account for a home owned by the surviving, unmarried spouse of a qualified deceased veteran who previously could not qualify during their lifetime.

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.

⁹ This is the current exemption amount. Since 2006, RTC Section 205.5(h) allows a compounding inflation factor to apply to the \$150,000 and \$100,000 amounts. This is the current income threshold. Since 2002, RTC Section 205.5(g) allows a compounding inflation factor to apply to the \$40,000 income threshold.

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