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March 15, 2005

The Honorable George J. Misner
Kings County Assessor-Clerk-Recorder
Kings County Government Center
1400 West Lacey Blvd.
Hanford, CA 93230-5905

Attn:
Senior Appraisal Aide

Dear Ms. :

This is in response to your letter dated December 22, 2004, to Assistant Chief Counsel Kristine Cazadd requesting our opinion as to whether veterans' benefits paid to an unmarried surviving spouse of a deceased veteran and her three children should be included in "household income" for purposes of determining the applicable property tax exemption amount under Revenue and Taxation Code section 205.5. [1] For the reasons discussed below, we conclude that the total amount of veterans' benefits paid to the unmarried surviving spouse, which includes the increased amount she receives for her three dependent children, should be included in the calculation of household income for purposes of determining the appropriate property tax exemption amount under section 205.5.

Factual Background

In your letter, you state that an unmarried surviving spouse of a deceased veteran included the veterans' benefits she received and attributed to her status as a surviving spouse in the calculation of household income for purposes of determining the appropriate amount of the property tax exemption under section 205.5. However, the surviving spouse did not include in the calculation the veterans' benefits she received and attributed to her three children. The surviving spouse contends that these latter benefits are received for the benefit and support of the children and are therefore income attributable to the children. As a result, the surviving spouse argues that these benefits, as income of minors, are not considered in calculating household income for purposes of determining the proper exemption amount. In contrast, your office contends that all of the veterans' benefits received by the surviving spouse should be included in the calculation of household income because the entire amount is sent to the surviving spouse and in her name.

Applicable Law and Analysis

Section 205.5, subdivision (c)(1), provides an exemption from property taxes on property owned by, and that constitutes the principal residence of, an unmarried surviving spouse of a

[1] All section references are to the Revenue and Taxation Code unless stated otherwise.

deceased veteran who was disabled and died from a disease or injury that was service-connected. The exemption applies to the first $100,000 of full value of the residence, or the first $150,000 of full value of the residence when the annual household income of the unmarried surviving spouse does not exceed $40,000, as adjusted for inflation pursuant to subdivision (g). Prior to 2001, section 205.5, subdivision (c)(1), provided that the disabled veterans' property tax exemption was available to an "unmarried surviving spouse whose household income as specified in Section 20504 does not exceed the amounts specified in Section 20585." (Emphasis added.) The references to sections 20504 and 20585 were deleted after 2000 and the $40,000 (annually adjusted for inflation) income limitation was added. The term "household income," however, continues to be used in section 205.5, without further definition.

Sections 20504 and 20585 are found in the portions of the Revenue and Taxation Code providing for the Senior Citizens Property Tax Assistance and Postponement Law. Section 20585 sets the threshold income amount at $34,000 for those who qualified for property tax postponement prior to 1984 and at $24,000 for those who qualified in 1984 or thereafter. When section 205.5 was amended in 2000, the low-income threshold amounts used for the disabled veterans' property tax exemption had not been changed for over 16 years because of the reference in section 205.5 to section 20585. As a result of the 2000 amendments, the low-income threshold amounts for the disabled veterans' property tax exemption were set at a level separate from the amounts specified for the property tax postponement law.

Given the 2000 amendments to section 205.5, we must determine what is properly included in "household income" for purposes of that section. Despite its deletion in 2000 from section 205.5, section 20504 offers a concise definition of "household income," which may prove to be most applicable. Section 20504, in relevant part, states "'[h]ousehold income' means all income received by all persons of a household while members of such household." Section 20506 defines "household" to include "the claimant and all other persons, except . . . minors . . . whose principal place of residence is the residential dwelling of the claimant[,]" while section 20503 defines "income" to specifically include veterans' benefits. A review of California statutes does not reveal any other definition of "household income" more applicable to these purposes.

Because section 20504 was deleted from section 205.5 in 2000, we look to other sources for a usable definition of "household income" in the event the Legislature intended use of a definition other than that found in section 20504. A search of California case law failed to uncover a definition of "household income" suitable for these purposes. Black's Law Dictionary (5th ed. 1979), although not providing a definition of "household income" per se, defines "household" at page 666 as "[b]elonging to the house and family; domestic[;]" and defines "income" at page 687 as "[t]he return in money from one's business, labor, or capital invested; gains, profits, salary, wages, etc." and as "[t]he true increase in amount of wealth which comes to a person during a stated period of time." Combining these dictionary definitions results in a definition of household income of "the true increase in the amount of wealth which comes to a person and belongs to the house and family through that person's membership in the house and family." Under this definition, we would conclude that the veterans' benefits received in the case at hand should be included in household income, regardless of who receives the benefits.

After reviewing the various sources for an applicable definition of "household income" and given that the definition of household income set forth in section 20504 can be read without reference to the income amounts set forth in section 20585 and that no new definitions of "household income" or references as to its meaning were added to section 205.5, we conclude

that section 20504, despite its deletion from section 205.5 in 2000, still provides the best definition of "household income" for purposes of section 205.5. Section 20504, read in conjunction with sections 20503 and 20506, reveals that while veterans' benefits are specifically included in the term "income," if the veterans' benefits are received by minors living in the household, then the benefits will not be included in the calculation of "household income" for purposes of section 205.5. We, therefore, must determine whether the veterans' benefits in question are income, as that term is defined, of the unmarried surviving spouse, or income of the minor children.

Title 38 United States Code (38 U.S.C.) sets forth a variety of veterans' benefits programs. Dependency and indemnity compensation (DIC) is the benefit paid by the Department of Veterans Affairs to eligible survivors of a veteran because of a service-connected death occurring after December 31, 1956. (38 C.F.R. § 3.5(a)(1).) 38 U.S.C. section 1310 provides that "[w]hen any veteran dies after December 31, 1956, from a service-connected or compensable disability, the Secretary shall pay dependency and indemnity compensation to such veteran's surviving spouse, children, and parents." 38 U.S.C. section 1311(a)(1) states that "[d]ependency and indemnity compensation shall be paid to a surviving spouse at the monthly rate of $993." 38 U.S.C. section 1311(b) further provides that "[i]f there is a surviving spouse with one or more children below the age of eighteen of a deceased veteran, the dependency and indemnity compensation paid monthly to the surviving spouse shall be increased by $247 for each such child." 38 U.S.C. section 1313(a) states:

> "Whenever there is no surviving spouse of a deceased veteran entitled to dependency and indemnity compensation, dependency and indemnity compensation shall be paid in equal shares to the children of the deceased veteran at the following monthly rates:
>
> "(1) one child, $402;
> "(2) two children, $578;
> "(3) three children, $752; and
> "(4) more than three children, $752, plus $145 for each child in excess of three."

Title 38 of the Code of Federal Regulations (Regulation) part 3.5 implements and interprets the sections of the United States Code outlined above. Regulation part 3.5(e) generally sets forth the surviving spouses' rate. Regulation part 3.5(e)(1) provides that the monthly rate of DIC for a surviving spouse is at the rate specified in 38 U.S.C. section 1311(a)(1). Regulation part 3.5(e)(3) sets forth the monthly rate of dependency and indemnity compensation payable to a surviving spouse with one or more dependent children and provides:

> "If there is a surviving spouse with one or more children under the age of 18 (including a child not in the surviving spouse's actual or constructive custody and a child who is in active military, air, or naval service), the total amount payable shall be increased by the amount set forth in 38 U.S.C. 1311(b) for each child."

Upon review of the federal statutory and regulatory scheme governing payment of veterans' benefits, we conclude that 38 U.S.C. section 1311(a)(1) provides an individual entitlement to an eligible surviving spouse to receive veterans' benefits. While 38 U.S.C. section 1311(b) increases the DIC paid monthly to the surviving spouse for each dependent child (child under age 18), it does not provide the dependent child a separate entitlement to the additional

benefits, as does 38 U.S.C. section 1313(a). Further, 38 U.S.C. section 1311(b) and Regulation part 3.5(e)(3) set forth the surviving spouse's benefits and specify that the increased benefits amount will be paid to the surviving spouse, even if the surviving spouse does not have actual or constructive custody of the minor child or the child is in active military service. We thus conclude that the amount of the increased benefit payable to the surviving spouse due to the existence of a dependent child is a benefit to which the surviving spouse is entitled; it is not the dependent child's separate benefit. As a result, in the case at issue, the total amount of DIC paid to the unmarried surviving spouse should be included in the calculation of "household income" for purposes of determining the appropriate amount of the property tax exemption allowed pursuant to Revenue and Taxation Code section 205.5.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

/s/ Reed Schreiter

Reed Schreiter
Senior Tax Counsel

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