STATE OF CALIFORNIA

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Executive Director

January 7, 1999

Hon. Gerald D. Cochran
Del Norte County Assessor
482 G Street
Crescent City, California 95531

Dear Mr. Cochran:

This is in reply to your letter of June 29, 1998 addressed to Assistant Chief Counsel Larry Augusta concerning the documentation necessary to qualify a veteran as "totally disabled" for purposes of the Disabled Veterans Property Tax Exemption. Specifically, you included with your letter, two examples of letters from the Department of Veterans Affairs that have been submitted to your office by disabled veterans claiming the exemption, and asked our opinion on whether those letters meet the test set forth on Board of Equalization Form BOE-261-G. Further, you inquire, other than a letter from the Department of Veterans Affairs, what else would be considered proof of the disability?

Our review of the Department of Veterans Affairs letters leads us to conclude that they appear to supply the applicable proof of total disability for the veterans' claims indicated. As to what other evidence would be considered proof of total disability, certification, similar to the letters you enclosed, from the military service from which a veteran was discharged would be proof of total disability for purposes of the exemption.

Revenue and Taxation Code section 277 provides that a person claiming the disabled veterans' property tax exemption shall accompany the claim with, among other things, "proof of disability as defined by Section 205.5." Revenue and Taxation Code section 205.5, subdivision (e) provides that:

> "being totally disabled means that the United States Department of Veterans Affairs or the military service from which the veteran was discharged has rated the disability at 100 percent or has rated the disability compensation at 100 percent by reason of being unable to secure or follow a substantially gainful occupation."

As you note, this definition is set forth at several places in the Board of Equalization standard form for claiming the disabled veterans' property tax exemption.

It is our view that section 205.5 makes clear that it is the Department of Veterans Affairs or the military service from which a veteran was discharged, and not the assessor's office, which is charged with determining whether a veteran meets the definition specified for "totally disabled." The assessor need only ensure that the disabled veteran submits proof that he or she has been adequately "rated" as specified in section 205.5. The letters you enclosed appear to be sufficient evidence of such a determination by the Department of Veterans Affairs.

The May 18, 1998 letter concerning "Everett F." states that that veteran "has a service-connected disability or disabilities rated 80% disabling, but has been awarded disability compensation at the 100% rate because the disability or disabilities prevent the veteran from securing or following a substantially gainful occupation." Thus, while the indicated 80% disability rating does not meet the section 205.5 required 100% disability rating, the award of disability compensation at the 100% rate because the disability prevents the securing or following a substantially gainful occupation does meet the second alternative test set forth in section 205.5.

The second letter, dated October 24, 1997, referring to "Robert L.," is less clear with regard to the specific language utilized in section 205.5. Like the May 18, 1998 letter, it states that the veteran "has a service-connected disability rating of 80 percent," which would not be a sufficient rating to meet the requirements of section 205.5. However, that letter goes on to state that the veteran is "totally disabled on account of service-connected disability due to injury or disease," and that he "is in receipt of the 100 percent rate due to individual Unemployability." We believe that it is appropriate to infer from these statements that the Department of Veteran Affairs has rated the disability compensation of the veteran at 100 percent by reason of his being unable to secure or follow a substantially gainful occupation, as required by section 205.5, even though the precise language of that section was not employed in the letter. As such, again, the second alternative test set forth in section 205.5 is met, and has been sufficiently proved, by the October letter.

With regard to what other evidence would be considered proof of the total disability, as noted above, sections 277 and 205.5, as read together, require proof that "the United States Department of Veterans Affairs or the military service from which the veteran was discharged has rated the disability at 100 percent or has rated the disability compensation at 100 percent by reason of being unable to secure or follow a substantially gainful occupation." Thus, although no particular form of certification is specified, it appears clear that some form of evidence from the Department of Veterans Affairs or the applicable military service, evidencing that the veteran has either been rated as 100 percent disabled or that the veteran's compensation has been rated at 100 percent by reason of the veteran being unable to secure or follow a substantially gainful occupation, must be submitted.

We hope the above is helpful to you in your evaluation of future claims for the Disabled Veterans Property Tax Exemption. If we can be of any further assistance, please do not hesitate to contact us.

The views expressed in this letter are advisory only; 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,

Daniel G. Nauman
Tax Counsel

DGN:jd
h:/property/precednt/genexemp/01dgn.doc

cc: Mr. Richard Johnson, MIC:63
Mr. David Gau, MIC:64
Ms. Jennifer Willis, MIC:70

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DEPUTY DIRECTOR
PROPERTY TAXES

(916) 445-8485

May 13, 1980

Mr. B :

Dear Mr. B :

This is in response to your May 2, 1980 letter to Mr. Glenn Rigby wherein you enclosed a copy of a 1980 Disabled Veterans' Property Tax Exemption claim filed by Mr. H , and a copy of an August 31, 1979, Veterans' Administration letter to Mr. H , and you asked whether Mr. H is qualified for the exemption as a totally disabled veteran.

Pursuant to Revenue and Taxation Code Section 205.5(a), a veteran's principal place of residence is exempted from taxation if the veteran is totally disabled as a result of injury or disease incurred in military service. "Totally disabled", for purposes of the section, means that the U.S. Veterans' Administration or the military service from which the veteran was discharged has rated the disability at 100 percent or has rated the disability compensation at 100 percent by reason of being unable to secure or follow a substantially gainful occupation (Rev. & Tax. Code, Sec. 205.5(f)).

According to the August 31, 1979, letter, the Veterans' Administration has found Mr. H's service-connected disability for tinnitus to be 10 percent disabling and his defective hearing in one ear to be 10 percent disabling, for a combined service-connected disability rating of 20 percent. Thus, not having a service-connected disability rating of 100 percent, Mr. H cannot qualify for the exemption as a totally disabled veteran.

The August 31, 1979, letter does go on to state that the nonservice-connected disabilities render Mr. H permanently and totally disabled, and that his nonservice-connected pension

will continue. As indicated, however, Section 205.5 requires that a veteran be totally disabled as a result of injury or disease incurred in military service. Thus, the fact that Mr. H is permanently and totally disabled because of nonservice-connected disabilities does alter the above conclusion.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

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