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Senate Bill 1458 (Bates)
Date: 06/29/16
Program: Property Taxes
Sponsors: BOE Member Runner (§205.5)
California Assessors' Association (§§4831.1, 5097. & 5097.3)
Revenue and Taxation Code Sections 205.5, 4831.1, 5097, and 5097.3
Effective: Upon enactment but operative for 2017-18 lien date
BOE Position: Support §205.5

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. Also extends the use of roll corrections to process disabled veteran related refunds to eight years.

Summary of Amendments: The amendments since the previous analysis allow counties to process roll corrections beyond four years, consistent with a recent change in law that allows disabled veterans to obtain up to eight years of refunds.

Purpose: According to the author, the purpose of the bill is (1) 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 and (2) to allow assessors to cost effectively provide refunds via the administrative procedure of assessment roll corrections.

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]

Service Discharge. 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

[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)

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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 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]

Roll Corrections. The law allows counties to issue a property tax refund after an assessment roll correction (RTC §4836). However, the law generally limits both roll corrections and refunds to the last four years. In the case of disabled veterans' exemption claims only, the law allows eight years of refunds (RTC §5097(a)(3)(4)).

Proposed Law:

Service Discharge. 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.

Roll Corrections. This bill allows counties to issue property tax refunds related to disabled veterans' exemptions using the mechanism of an assessment roll correction for assessment rolls beyond four years. Specifically, this bill:

- Adds RTC Section 4831.1 to allow the assessor to process eight years of roll corrections for disabled veteran exemption claims.
- Amends RTC Section 5097(a)(4) for those counties that send refund notices and require refund claims for roll corrections under RTC Sections 4836(a) and 5097(a)(2).
- Adds RTC Section 5097.3 for those counties that process roll correction-related refunds under RTC Sections 4836(a) and 5097.2.

Effective Date. As a tax levy, this bill is effective immediately upon enactment. However, the bill provides that it applies commencing with the lien date for the 2017-18. (RTC Section 205.5(i))

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. The exemption, however, is no longer available to a surviving spouse once he or she remarries. In the case of an active duty death, the exemption also is no longer available to a surviving spouse after remarriage.

[5] Section 3(o) of Article XIII of the California Constitution
[6] Section 3(o) of Article XIII of the California Constitution.
[7] Section 4(a) of Article XIII of the California Constitution.

Qualification	Basic Exemption Amount	Lower Income Exemption Amount $40,000 adjusted for inflation **$58,754**
Disabled Veteran • Disability Rating = 100% • Disability Compensation = 100% • Blind • Lost the Use of Two or More Limbs **Spouse of Military Personnel** • Surviving Spouse: Disabled Veteran • Surviving Spouse: Active Duty Death • Surviving Spouse: Posthumous service-connected death finding	$100,000 adjusted for inflation **$130,841**	$150,000 adjusted for inflation **$196,262**
Claims Granted: 37,653	**33,196**	**4,457**

Background:

Service Discharge. 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:

> **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.
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> 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:
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> 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.

Refunds and Roll Corrections. In 2014, Senate Bill 1113 (Stats. 2014, Ch. 656, Knight) expanded from four years to eight the time period in which disabled veterans otherwise eligible to receive the disabled veterans' exemption on their home could be refunded property taxes previously paid.

The administrative process used to issue a property tax refund for a roll correction can differ in the various counties. The law grants counties options on how to issue a property tax refund after a roll correction (see RTC §4836). For instance, after an assessor's roll correction, a county auditor can directly process and issue the refund per RTC §5097.2(c). Or, a county auditor can send a refund notice to the taxpayer, include a claim for refund, and require the taxpayer to file the claim within 60 days of that notice, per RTC §5097(a)(2). The statutes also grant counties flexibility as to the direct involvement of the board of supervisors in issuing property tax refunds by allowing the counties to adopt resolutions that delegate authority to other county officers to perform those duties (see RTC §4804).

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 June 29, 2016 amendments** added the provisions sponsored by the California Assessors' Association. **The June 23, 2016 amendments** delayed the operative date to the lien date as suggested in the prior BOE analysis in order to ease administration and reduce county administrative costs. **The April 6, 2016 amendments incorporated suggestions made by the Senate Committee on Veterans Affairs.** The amendments clarified 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 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 contacts 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 exists 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. **Prospective application.** For clarity, the bill should state that the change in exemption eligibility is effective prospectively as of a specific date.

10. **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]

11. **How much is the exemption?** The exemption amount depends upon the claimant's income. For the 2017-18 fiscal year, for persons with household incomes below $58,754, the exemption amount is $196,262. For all other eligible persons, the exemption amount is $130,841.[9]

12. **How many homes have been granted the disabled veterans' exemption?** For 2015, 37,653 exemptions were granted to eligible claimants: 33,196 basic exemptions and 4,457 lower income exemptions.

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[8] RTC Section 205.5(e)

[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.

13. **Top 10 Counties.** For 2015, 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. **Refunds and Roll Corrections.** In 2014, SB 1113 amended RTC §5097 to extend to eight years the time period permissible for otherwise eligible taxpayers to receive refunds for taxes previously paid when they should have qualified for the disabled veterans' exemption. However, this legislation lacked provisions to allow counties to use their existing roll correction process as the administrative mechanism to provide these additional refunds. Allowing counties to use assessment roll correction procedures would be administratively less complex because of the coordination otherwise necessary between different county offices (board of supervisors, tax collector, auditor, and assessor, etc.) to calculate, authorize, and issue the refund check. Additionally, this should make the process more seamless for the disabled veteran.

15. **Roll Correction Flexibility.** This bill gives counties the authority to use their existing roll correction procedures to provide disabled veterans' exemption refunds for additional prior tax years as authorized by 2014's SB 1113. The procedures differ depending on which option in law the county uses. These amendments are necessary because RTC §4831 limits roll corrections to those occurring within four years after making an assessment, and, for those counties that use RTC §5097.2 to issue roll correction-related refunds, those refunds are limited to taxes paid within the last four years. Additionally, for those counties that send refund notices under RTC §4836(a) and issue roll correction-related refunds per RTC §5097(a)(2) identical language concerning refund notices is added to RTC §5097(a)(4), the provision added by SB 1113 to expand refunds available to disabled veterans to the last eight years of taxes paid.

16. **Related Legislation.** 2016 legislation proposing to amend RTC Section 205.5 includes:

AB 1556	Mathis	**Exemption Amount.** Increase to $2.1 Million with inflation factoring, sunset date of January 1, 2020, or earlier if certain conditions apply. **Blind and Mobility Definitions.** • Adds New Category of Total Disability Related to Mobility. • Modifies Blind Definition.
SB 690	Stone	**Exemption Amount.** Increase to 100% exemption: Low-Income Veterans
SB 1104	Stone	**Exemption Amount.** Increase to 100% exemption: All Veterans
SB 1183	Bates	**Exemption Amount.** Increase to $1 Million with inflation factoring. No sunset date. **Blind and Mobility Definitions.** • Adds New Category of Total Disability Related to Mobility. • Modifies Blind Definition.
SB 1458	Bates	**Discharge Classification.** Extends exemption to disabled veterans with other than dishonorable discharge and receiving 100% disability compensation or have a 100% disability rating and eligible for federal veterans' health and medical benefits.

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

Revenue Impact:

Background, Methodology, and Assumptions. Existing property tax law provides a disabled veterans' exemption to military personnel, or their spouses, in the event of a service-connected injury, disease, or death, as specified. 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, with all amounts adjusted for inflation.

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The following revenue impact estimate uses FY 2015-16 data and exemption amounts for consistency, since this is the most recent year where all variables for the same year are available. For 2015-16, the basic exemption amount was $126,380. The lower income exemption amount was $189,571 for claimants with a household income below $56,751.

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. For 2017, the basic disabled veterans' exemption amount increases to $130,841, the lower income disabled veterans' exemption amount increases to $196,262, and the household income limit increased to $58,754. Counties will apply these amounts to their FY 2017-18 property tax rolls.

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.