

**LETTER OPINION
2008-L-12**

July 15, 2008

Mr. Richard J. Riha
Burleigh County State's Attorney
514 E Thayer Ave
Bismarck, ND 58501-4413

Dear Mr. Riha:

Thank you for your letter asking about the property tax exemption provided under N.D.C.C. § 57-02-08(20)(b) for certain disabled veterans. You question the Tax Commissioner's interpretation of this provision that the property tax exemption should be available to disabled veterans based on the greater of the combined evaluation percentage or the percentage at which the disabled veteran is compensated by the U.S. Department of Veterans Affairs. For the reasons indicated below, it is my opinion that a court would likely determine that the Tax Commissioner's construction of N.D.C.C. § 57-02-08(20)(b) is reasonable and entitled to deference and that a disabled veteran may claim a property tax exemption under this statute based on the greater of the combined evaluation percentage or the percentage at which the disabled veteran is being compensated.

ANALYSIS

State law provides for certain property tax exemptions.¹ The pertinent statute provides, in part:

All property described in this section to the extent herein limited shall be exempt from taxation:

....

20. Fixtures, buildings, and improvements up to the amount of valuation specified, when owned and occupied as a

¹ See N.D.C.C. § 57-02-08.

homestead, as hereinafter defined, by any of the following persons:

. . . .

- b. A disabled veteran of the United States armed forces who was discharged under honorable conditions or who has been retired from the armed forces of the United States with an armed forces service-connected disability of fifty percent or greater, or the unremarried surviving spouse if the veteran is deceased for a percentage, equal to the percentage of the disabled veteran's certified rated service-connected disability, applied against the first one hundred twenty thousand dollars of true and full valuation of the fixtures, buildings, and improvements.²

Thus, under the statute, retired or honorably discharged disabled veterans with service-connected disabilities of fifty percent or greater are entitled to a property tax exemption on up to \$120,000 of the true and full valuation of fixtures, buildings, and improvements "equal to the percentage of the disabled veteran's certified rated service-connected disability."³ As you indicate in your letter, the U.S. Department of Veterans Affairs (VA) apparently does not use the term "certified rated service-connected disability" that appears in the statute.⁴ The VA instead may issue a single disability percentage or a combined evaluation percentage which may be increased by certain factors to result in a higher calculation of disability.⁵ You further indicate that certain veterans applying for the benefit in your county have been seeking to have their benefit based on the actual percentage they are being paid for disability payments rather than just the service-connected disability.

In a recent property tax newsletter issued by the Office of State Tax Commissioner, the following was noted:

² N.D.C.C. § 57-02-08(20)(b).

³ Id.

⁴ See Clarifications Regarding the Veteran's Exemption, Property Tax Newsletter (Office of State Tax Comm'r), Feb. 2008.

⁵ See Administration of Disabled Veterans' Property Tax Exemptions, Property Tax Newsletter (Office of State Tax Comm'r), Aug. 2007, and E-mail from Daniel L. Rouse, Legal Counsel, N.D. Tax Dep't, to Matthew A. Sagsveen, Assistant Att'y General (May 8, 2008, 11:42 a.m.).

There may be situations where the V.A. statement indicates that the veteran is compensated at a different percentage than the combined evaluation percentage. The U.S. Department of Veterans Affairs does not use the term “certified rated service-connected disability.” If this occurs, the Tax Department recommends assessment officials use either:

1. the combined evaluation percentage, or
2. the percentage at which the veteran is being compensated, whichever is greater, as the basis for determining the percentage of exemption.⁶

Tax Department representatives were informed by VA officials that there are instances where disabled veterans have been awarded service-connected disability in the 50 to 90 percent range but due to some aggravating condition are considered by the VA as unemployable, thus paid a rate of 100 percent disability and regarded by the VA as 100 percent disabled.⁷ “Based on this information, [the Tax Department] concluded the level of compensation (the rating tied to that compensation) was a defensible basis upon which to measure any property tax exemption to be enjoyed by the disabled veteran.”⁸

Thus, language in N.D.C.C. § 57-02-08(20)(b) is ambiguous, in that the percentage of the disabled certified rated service-connected disability could either be just the bare disability rating or the percentage at which the disabled veteran is actually being compensated and regarded by the VA as disabled. The North Dakota Supreme Court has noted that “[w]hen an act of the legislature is ambiguous, we give weight to the practical and contemporaneous construction of the statute by the attorney general and the officers charged with administering the statute.”⁹ “In 1990, this office concluded that the Tax Commissioner’s Office has statutory authority to issue guidelines related to the ad valorem taxation of property, including guidelines specifically directed to [certain] exemptions The North Dakota Supreme Court gives weight to property tax guidelines issued by the Tax Commissioner’s Office that give practical construction to an ambiguous statute.”¹⁰

⁶ Clarifications Regarding the Veteran’s Exemption, Property Tax Newsletter (Office of State Tax Comm’r), Feb. 2008.

⁷ E-mail from Daniel L. Rouse, Legal Counsel, N.D. Tax Dep’t, to Matthew A. Sagsveen, Assistant Att’y General (May 8, 2008, 11:42 a.m.).

⁸ Id.

⁹ United Hosp. v. D’Annunzio, 514 N.W.2d 681, 684 (N.D. 1994).

¹⁰ N.D.A.G. 2004-L-15 (citing N.D.A.G. Letter to Quast (Mar. 14, 1990) and Ladish Malting Co. v. Stutsman County, 351 N.W.2d 712, 720 (N.D. 1984)).

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The interpretation of the Tax Commissioner's Office regarding the disabled veterans exemption contained in the February 2008 property tax newsletter is, in effect, a guideline for local assessing officials to utilize in attempting to apply an ambiguous statute. The Office of State Tax Commissioner's practical and contemporaneous construction of N.D.C.C. § 57-02-08 is within the range of reasonable interpretation and entitled to weight and deference.¹¹ Consequently, it is my opinion that a court would likely determine that the Tax Commissioner's construction of N.D.C.C. § 57-02-08(20)(b) is reasonable and entitled to deference and that a disabled veteran may claim a property tax exemption under this statute based on the greater of the combined evaluation percentage or the percentage at which the disabled veteran is being compensated in determining the percentage of exemption available.

Sincerely,

Wayne Stenehjem
Attorney General

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This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.¹²

¹¹ The most recent legislative history for N.D.C.C. § 57-02-08(20)(b) is not particularly helpful in construing this ambiguous statute.

¹² See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).