

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF VETERANS SERVICES



**Guidelines Governing the Administration of the
Veteran and Surviving Spouse Property Tax
Exemption**

May 2023

PURPOSE: This document implements the Code of Virginia §§ 58.1-3219.5 through 58.1-3219.16, and provides guidance to Commonwealth veterans, surviving spouses of qualified veterans, and to Commissioners of Revenue and assessing officials on the administration of the various real estate tax exemptions applicable to them. It also provides guidance on real estate tax exemptions available to the qualified surviving spouses of members of the Armed Forces of the United States killed in action or who died in the line of duty. It incorporates the official advisory opinions of the Attorney General. These regulations are designed to promote uniformity in the application and qualification process for those citizens who qualify for the real property tax exemption as provided for in Article X, Section 6-A of the Constitution of Virginia, and Title 58.1 of the Code of Virginia. Finally, this document also provides guidance on the personal property tax exemption for veterans rated 100% permanent and totally disabled by the United States Department of Veterans Affairs.

AUTHORITY: Code of Virginia § 58.1-3219.7 and § 58.1-3219.11, which provides:

§ 58.1-3219.7 Commissioner of the Department of Veterans Services; rules and regulations; appeal.

A. The Commissioner of the Department of Veterans Services shall promulgate rules and regulations governing the administration and implementation of the property tax exemption under this article. Such rules and regulations shall include, but not be limited to, written guidance for veterans residing in the Commonwealth and for commissioners of the revenue or other assessing officers relating to the determination of eligibility for the property tax exemption under this article and procedures for appealing a decision of the Commissioner of the Department of Veterans Services to a circuit court pursuant to subsection B. The Commissioner of the Department of Veterans Services may also provide written guidance to, and respond to requests for information from, veterans residing in the Commonwealth and commissioners of the revenue or other assessing officers regarding the exemption under this article, including interpretation of the provisions of subdivision (a) of Section 6-A of Article X of the Constitution of Virginia and this article.

B. The Commissioner of the Department of Veterans Services shall hear and decide appeals by veterans residing in the Commonwealth from a denial of their application pursuant to § 58.1-3219.6 by a commissioner of the revenue or other assessing officer. However, such appeal shall be limited to appeals based upon a finding of fact regarding eligibility criteria set forth in subdivision (a) of Section 6-A of Article X of the Constitution of Virginia and this article. The Commissioner of the Department of Veterans Services shall not be authorized to hear or decide appeals regarding a dispute over the assessed value of any property. Nothing in this section shall be construed to limit the appeal of a decision of the Commissioner of the Department of Veterans Services by either party to the circuit court in the locality in which the veteran resides.

§ 58.1-3219.11 Commissioner of the Department of Veterans Services; rules and regulations.

The Commissioner of the Department of Veterans Services shall promulgate rules and regulations governing the administration and implementation of the property tax exemption under this article. Such rules and regulations shall include, but not be limited to, written guidance for surviving spouses residing in the Commonwealth and for Commissioners of the Revenue or other assessing officers relating to the determination of eligibility for the property tax exemption under this article. The Commissioner of the Department of Veterans Services may also provide written guidance to, and respond to requests for information from, surviving spouses residing in the Commonwealth and Commissioners of the Revenue or other assessing officers regarding the exemption under this article, including interpretation of the provisions of subdivision (b) of Section 6-A of Article X of the Constitution of Virginia and this article.

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COMMONWEALTH of VIRGINIA

Department of Veterans Services

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Introduction by the Commissioner, Department of Veterans Services.

On behalf of Governor Glenn Youngkin, Secretary of Veterans and Military Affairs Craig Crenshaw, and the dedicated men and woman of the Department of Veterans Services, I am proud to lead the agency committed to providing support and opportunities to the over 690,000 veterans and their families who call the Commonwealth of Virginia their home. Our mission is to serve Virginia's veterans, members of the Virginia National Guard, Virginia residents in the Armed Forces Reserves, and their family members, by ensuring they receive the benefits they have earned through their service and sacrifice to our Nation and Commonwealth. We are oriented around a the objective of service that allows veterans to **STAY, WORK, and THRIVE** in the Commonwealth. We want Virginia veterans to return to Virginia after their service; we want to keep as many veterans who leave service in Virginia here after that service; we want to help veterans get jobs or grow their businesses; and we want to provide the ancillary services that will assist them in their own thriving.

In furtherance of our mission, this guidance, along with our implementing regulations, are intended to assist veterans and their families, along with Commissioners of the Revenue and other local assessing officials, address questions associated with the application of the real estate tax exemption for 100% service-connected, permanent and totally disabled veterans and their qualifying surviving spouses, and the surviving spouses of those killed in action, died of wounds received in combat, and died in the line of duty, as determined by the U.S. Department of Defense. This document also includes information on the personal property tax exemption for veterans rated 100% permanent and total.

Questions concerning qualification for a tax exemption should be emailed to: info@dvs.virginia.gov.

Sincerely,

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1. Role of the Department of Veterans Services

The Virginia Department of Veterans Services (DVS) serves primarily in an advisory capacity. Veterans, surviving spouses, and other government officials may seek guidance from DVS. In furtherance of the fair and uniform application of the legislation, DVS may render technical assistance on matters involving veteran and surviving spouse eligibility, however, initial decisions concerning the approval or denial of a tax exclusion or benefit belong, exclusively, to local Commissioners of Revenue and other assessing officers.

To remain neutral and detached on these issues, DVS will not generate applications for local tax authorities or send applications for tax relief directly to veterans or surviving spouses. DVS personnel may not represent veterans or surviving spouses on real estate and personal property tax relief matters. They may, however, continue to represent veterans via Power of Attorney on matters associated with their application and/or appeal for U.S. Department of Veterans Affairs (VA) benefits.

The U.S. Department of Veterans Affairs (VA) is a federal agency. While DVS works closely with the VA on many matters in support of the Commonwealth's veterans and their families, it has no ability to direct the VA to produce or provide Summary of Benefits letters in any particular format.

As required by statute, the DVS Commissioner also serves as the appellate authority for the tax exemptions found in Code of Virginia §58.1-3219-5. The Commissioner's authority, however, is limited to appeals based upon a finding of fact regarding eligibility criteria set forth in the Constitution of Virginia, Article X, Section 6A.

2. Role of the Attorney General

The Office of the Attorney General provides legal advice to DVS and other government officials. Per Code of Virginia § 2.2-505, the Attorney General shall give his advice and render official advisory opinions in writing when requested to do so in writing by the head of a state department (such as the DVS Commissioner) or a Commissioner of Revenue or similar officer (among many other government officials) when a question dealt with is directly related to the discharge of the duties of the official requesting the opinion.

Official opinions represent the Attorney General's analysis of current law based on thorough research of existing statutes, the Virginia and United States Constitutions, and relevant court decisions. They are not "rulings" and do not create new law, nor do they change existing law. Creating and amending laws is the responsibility of the General Assembly, not the Attorney General. See <https://www.oag.state.va.us/citizen-resources/opinions/official-opinions>.

Attorney General Advisory Opinions addressing several issues associated with the disabled veterans' and surviving spouse tax break are at Appendices H-K.

3. Eligibility of Tax Exclusions

In total, there are five separate real and personal property exemptions that apply to certain veterans and their surviving spouses. In each instance, the Code of Virginia provides the exclusive and comprehensive list of conditions sufficient to qualify for the exemption. Pursuant to the *Dillon Rule*, no locality may impose any additional requirements beyond those specified in the Constitution of Virginia and the Code of Virginia, as outlined in these guidelines and regulations. Specifically, there are no income or asset limitations, there is no application deadline, and, once qualified, veterans and surviving spouses need only reapply if they change their principal place of residence.

A. Real Property Tax Exemption for Veterans Rated 100% Disabled, Permanent and Total (Code of Virginia §58.1-3219-5).

To qualify for this tax exemption, a veteran of the U.S. armed forces must:

1. Have a service-connected disability rated by the U.S. Department of Veterans Affairs or its successor agency at 100% permanent and total; **and**
2. Own the real property (in whole or in part) for which the tax exemption is sought; **and**
3. Occupy the property as their principal place of residence. In accordance with Code of Virginia §58.1-3219-8, a veteran otherwise qualified for the tax exemption does not become disqualified for the exemption while residing in a hospital, nursing home, convalescent home, or other such facilities provided the real estate is not used by or leased to others for consideration (i.e., a rental payment or payment in kind).

The tax exemption is applicable for tax years beginning January 1, 2011 and beyond.

To qualify, the real property may be (i) held by a veteran alone or in conjunction with the veteran's spouse as tenant or tenants for life or joint lives, (ii) held in a revocable inter vivos trust over which the veteran or the veteran and his spouse hold the power of revocation, or (iii) held in an irrevocable trust under which a veteran alone or in conjunction with his spouse possesses a life estate or an estate for joint lives or enjoys a continuing right of use or support. The tax exemption does not apply to property leased by the veteran.

When a qualifying veteran's primary residence is jointly owned by two or more individuals, not all of whom qualify for the exemption, then the veteran will only be entitled to a partial exemption, as defined under Code of Virginia §58.1-3219-5 (E).

For a detailed discussion of VA disability ratings, please see paragraph 5 below.

B. Real Property Tax Exemption for Surviving Spouses of Veterans Rated 100% Disabled, Permanent and Total (Code of Virginia §58.1-3219-5).

To qualify for this tax exemption, a surviving spouse of a disabled must satisfy four additional conditions (for a total of 7 conditions):

1. The veteran must have had a service-connected disability rated by the U.S. Department of Veterans Affairs or its successor agency at 100% permanent and total; **and**
2. The veteran must have owned the real property (in whole or in part) for which the tax exemption is sought; **and**
3. The veteran must have occupied the property as their principal place of residence while living; **and**
4. The surviving spouse must have been married to the veteran on or after January 1, 2011; **and**
5. The death of the veteran must have occurred on or after January 1, 2011; **and**
6. The surviving spouse must not have remarried following the veteran's death; **and**
7. The surviving spouse must occupy the residence for which the tax exemption is sought as their principal place of residence. The exemption applies without any restriction on the surviving spouse moving to a different principal place of residence once the original eligibility is established.

To qualify, the real property may be (i) held by the veteran's surviving spouse as tenant for life, (ii) held in a revocable inter vivos trust over which the surviving spouse holds the power of revocation, or (iii) held in an irrevocable trust under which the surviving spouse possesses a life estate or enjoys a continuing right of use or support. The exemption does not apply to any interest held under a leasehold or term of years.

When a qualifying surviving spouse's primary residence is jointly owned by two or more individuals, not all of whom qualify for the exemption, then the surviving spouse will only be entitled to a partial exemption, as defined under Code of Virginia §58.1-3219-5 (E).

For a detailed discussion of VA disability ratings, please see paragraph 5 below.

C. Real Property Tax Exemption for Surviving Spouses of Members of the Armed Forces Killed in Action (Code of Virginia §58.1-3219-9).

To qualify for this tax exemption, a surviving spouse of a member of the U.S. armed forces who was killed in action must satisfy 5 conditions:

1. The member of the U.S. armed forces must have been killed in action or "died of wounds received in action" after January 1, 2015, as determined by the U.S. Department of Defense; **and**
2. The surviving spouse owns the real property (in whole or in part) for which the tax exemption is sought; **and**
3. The surviving spouse must not have remarried following the service member's death; **and**
4. The surviving spouse must occupy the residence for which the tax exemption is sought as their principal place of residence. The exemption applies without any restriction on the surviving spouse moving to a different principal place of residence.

The surviving spouse's tax exemption is applicable for tax years beginning January 1, 2015 and beyond, beginning on the date of the service member's death (after January 1, 2015) provided the surviving spouse has a qualified principal residence on that date. If the surviving spouse acquires the principal residence after January 1, 2015, the exemption is applicable on the date of acquisition. There is no requirement that the spouse reside in the Commonwealth at the time of the service member's death.

The amount of the tax exemption depends on the assessed value of the qualified real property. A surviving spouse's qualified principal place of residence with an assessed property value not in excess of the average assessed value for the most recently ended tax year for a dwelling situated on property that is zoned as single family residential will qualify for a total exemption. Should the property's assessed value exceed the average assessed value, only the amount exceeding the average assessed value will be subject to real estate taxes.

To qualify for the tax exemption, the real property of any surviving spouse of a member of the armed forces killed in action may be (i) held by a surviving spouse as a tenant for life, (ii) held in a revocable inter vivos trust over which the surviving spouse holds the power of revocation, or (iii) held in an irrevocable trust under which the surviving spouse possesses a life estate or enjoys a continuing right of use or support. The term does not include any interest held under a leasehold or term of years.

When a qualifying surviving spouse's primary residence is jointly owned by two or more individuals, not all of whom qualify for the exemption, then the surviving spouse will only be entitled to a partial exemption, as defined under Code of Virginia §58.1-3219-9 (F).

D. Real Property Tax Exemption for Surviving Spouses of Members of the Armed Forces Who Died in the Line of Duty (Code of Virginia §58.1-3228.2)

To qualify for this tax exemption, a surviving spouse of a member of the U.S. armed forces who died in the line of duty must satisfy 6 conditions:

1. The member of the U.S. armed forces must have died in the line of duty;
2. The U.S. Department of Defense must have completed a line of duty determination and determined the death was not the result of criminal conduct; **and**
3. The surviving spouse must have been married to the service member at the time of his/her death in the line of duty; **and**
4. The surviving spouse owns the real property for which the tax exemption is sought (which may have been acquired before or after the service member's death); **and**
5. The surviving spouse must not have remarried following the service member's death; **and**
6. The surviving spouse must occupy the residence for which the tax exemption is sought as their principal place of residence. The exemption applies without any restriction on the surviving spouse moving to a different principal place of residence.

Upon meeting the conditions above, the tax locality *may*, by ordinance, levy a tax on the property at a different rate than the tax imposed on other real property. The rate of the levied tax must be greater than zero, but not exceed the tax rate of other real property. In practical terms, the property will still be taxed by the locality, but at a lower rate.

This is only applicable to tax years beginning on or after January 2, 2022. There is no requirement that the surviving spouse reside in the Commonwealth at the time of the service member's death.

E. Real Property Tax Exemption Qualification Prior to Purchasing a Qualifying Property (Code of Virginia §58.1-3219.6)

The veteran or surviving spouse may claim the exemption under this article prior to purchasing the qualifying dwelling by filing the documentation as required by subsection A and valid documentation of the purchase agreement for the qualifying dwelling.

1. The commissioner of the revenue of the county, city, or town, or such other officer as may be designated by the governing body in which the real property is located, shall, within 20 business days following receipt of such documentation, process the application and send the veteran a letter stating whether the application is approved or denied.
2. If the application is approved, the letter shall also include the amount of the tax exemption for the qualifying property the veteran intends to purchase.
3. However, the exemption described in such a letter shall become effective only after the veteran becomes the owner of the property

F. Personal Property (Motor Vehicle) Tax Exemption for Veterans of the U.S. Armed Forces and Virginia National Guard Rated 100% Disabled, Permanent and Total (Code of Virginia §58.1-3668)

To qualify for this personal property tax exemption, the veteran of the U.S. Armed Forces or the Virginia National Guard must:

1. Have a service-connected disability rated by the U.S. Department of Veterans Affairs or its successor agency at 100% permanent and total; **and**
2. Own the motor vehicle (a passenger car, pickup, or panel truck, as defined by Code of Virginia § 46.2-100) for which the tax exemption is sought; **and**
7. Register the qualified motor vehicle for personal use.

A single motor vehicle meeting the requirements above shall be exempt from personal property tax. The motor vehicle owned by a married person may qualify if either spouse meets the requirements above.

The tax exemption begins on January 1, 2021, or the date the motor vehicle is acquired, whichever is later. It expires on the date of the veteran's death and, as provided by statute, is not available to the veteran's surviving spouse.

Questions concerning the motor vehicle tax exemption should be directed to the Virginia Department of Motor Vehicles.

5. Disability Ratings Adjudicated by the U.S. Department of Veterans Affairs

Article X Section 6-A and § [58.1-3219.5](#) requires exemption from taxation on the real property *“of any veteran who has been rated by the U.S. Department of Veterans Affairs or its successor agency pursuant to federal law to have a one hundred percent service-connected, permanent, and total disability.”*

A. 100% Disabled, Permanent and Total: Schedular Rating

Following the completion of military service, veterans are evaluated by the U.S. Department of Veterans Affairs (VA) to determine whether the veteran suffers from a service-connected disability. A VA disability rating is a percentage assigned to a service-connected disability based on the severity of the condition. Disability ratings are meant to compensate veterans for the average impairment in a veteran's earning capacity caused by their service-connected conditions.

A veteran's disabilities are rated from 0% to 100%, in increments of 10%. Generally, the more severe a disability, the higher the disability rating will be. Veterans often suffer from more than one service-connected disability, so the VA uses the term “disability rating” as to cover all the veteran's rated disabilities. Under the VA Schedule for Rating Disabilities, the highest combined grade of disability is 100%, which means that a veteran is totally disabled. When the VA adjudicator uses the Schedule for Rating Disabilities to evaluate a veteran as 100% disabled, this is known as a “schedular rating.”

B. 100% Disabled - Total Disability Individual Unemployability (TDIU)

At times, a veteran's schedular rating falls below 100% disabled, but the VA nonetheless evaluates a veteran to be unemployable, meaning they are unable to obtain “substantially gainful employment,” that pays at least the annual poverty level set by the federal government. To be minimally eligible, a veteran must have a single service-connected condition with a schedular rating of 60% or with at least two service-connected conditions with a

combined schedular rating of 70% or greater. This is known as “Total Disability Individual Unemployability” or TDIU for short. When a veteran is determined to be TDIU, they are compensated at a rate equal to a schedular rating of 100% disabled. As the Attorney General notes in Opinion 11-061 (Appendix I), “a TDIUI rating is simply ‘an alternative way to obtain a total disability rating without being rated 100% disabled under the Rating Schedule.” See [38 C.F.R. § 4.16](#).

C. Permanent and Total

Disabilities rated by the VA can be temporary or permanent. This applies to either schedular ratings or determinations of TDIU. For example, a veteran suffering from a curable form of cancer may be rated initially at 100% disabled while undergoing treatment. That rating may later get reduced to a lower amount at the completion of treatment, depending on the veteran’s prognosis. On the other hand, a veteran rated 100% disabled permanent and total is not expected to improve.

VA policy provides that “all veterans who are unable to secure and follow a substantially gainful occupation by reason of service-connected disabilities shall be rated totally disabled,” receiving a TDIU rating is simply “an alternative way to obtain a total disability rating without being rated 100% disabled under the Rating Schedule.” Furthermore, the VA regulations provide that “all veterans who are basically eligible and who are unable to secure and follow a substantially gainful occupation by reasons of disabilities which are likely to be permanent shall be rated as permanently and totally disabled.”

The VA Summary of Benefits letter will indicate the veteran is TDIU and the disability rating is total and permanent. See FAQ and Appendix P.

D. Application of TDIU to the Veterans’ and Surviving Spouse Tax Exclusion

TDIU ratings consider the effect that service-connected disabilities have on an individual veteran’s ability to work. The application for tax relief should therefore be approved when the combined service-connected evaluation is less than 100%, if the veteran is paid at the 100% rate because they are unemployable due to service-connected condition(s) *and* determined by the VA to be totally and permanently disabled due to those conditions.

Under federal law, a veteran may be considered 100% disabled, total and permanent, through either a schedular rating or a TDIU determination. In the case of *Norris v. West*, 12 Vet. App. 413 (1999), the U.S. Court of Appeals for Veterans Claims found that a “claim for TDIU is based on an acknowledgement that even though a rating less than 100% under the rating schedule may be correct, objectively, there are subjective factors that may permit assigning a 100% rating to a particular veteran under particular facts.”

Article X, § 6-A to the Constitution of Virginia and Code of Virginia §§ 58.1-3219.5 and 58.1-3219.6, do not specify how the VA determines a rating of 100% disabled other than that the disability must be service connected. More specifically, the Constitution includes in tax relief “any veteran who has been rated by the U.S. Department of Veterans Affairs or its successor agency *pursuant to federal law*.” Since federal law recognizes the VA uses both methods to determine a veterans disability rating, either a schedular rating or TDIU determination that the veteran is 100% disabled, total and permanent, is applicable and renders a veteran (and/or surviving spouse) eligible for the tax exclusion.

6. Eligibility Chart

Property in Virginia may be legally deeded in a variety of ways. While the Code of Virginia attempts to address most arrangements, not all real property occupied by an otherwise qualified veteran or surviving spouse receives favorable tax treatment. The chart below attempts to address common situations:

Property Deed	Occupancy	Qualify	Logic
Veteran Only	Veteran's primary residence	YES	Veteran is on the deed and uses it as their primary residence
Veteran & Spouse	Veteran's primary residence	YES	Veteran is on the deed and uses it as their primary residence (joint marital property)
Veteran & Spouse	Veteran's primary residence, but spouse does not reside there (separation, assisted living, etc.)	YES	Veteran is on the deed and uses it as their primary residence (joint marital property)
Veteran & Spouse	Spouse's primary residence but the veteran does not reside there because they are in hospital, assisted living, etc.	YES	Veteran is on the deed and uses it as their primary residence (joint marital property). Code of Virginia §58.1-3219.8 applies
Veteran & Spouse	Spouse's primary residence but the veteran does not reside there because of a separation	NO	Not veteran's primary residence
Spouse Only	Primary residence of veteran and spouse	NO	Veteran is not on the deed to the property
Veteran and Third-Party (Not Spouse)	Primary residence of veteran and spouse	PARTIAL	Code of Virginia §58.1-3219.5 (E) addresses apportionment
Third-Parties Related to the Veteran (Children, Siblings, Parents, etc)	Primary residence of veteran (with or without spouse)	NO	Veteran is not on the deed to the property
Property in Revocable Inter Vivos Trust – Veteran may Revoke	Primary residence of veteran (with or without spouse)	YES	Code of Virginia §58.1-3219.5 (D) addresses trusts
Property in Irrevocable Trust – Veteran with a Life Estate or Right of Use/Support	Primary residence of veteran (with or without spouse)	YES	Code of Virginia §58.1-3219.5 (D) addresses trusts

Qualified Surviving Spouse	Primary residence of surviving spouse	YES	Surviving spouse is on the deed and uses it as their primary residence
Qualified Surviving Spouse and Veteran's Parent/Sibling/Adult Child	Primary residence of surviving spouse	PARTIAL	Surviving spouse is joint owner with non-qualified person. Code of Virginia §58.1-3219.5 (E) addresses apportionment
Veteran's Adult Children Who Support the Surviving Spouse	Primary residence of surviving spouse	NO	Property is not owned by the surviving spouse

7. Application Process

Veterans and surviving spouses applying for a real or personal property tax exemption should begin by contacting their local Commissioner of Revenue or tax assessor to obtain the locality-specific application form. An example of such an application form is located at Appendix L. While it is incumbent upon the property owner seeking the exemption to complete the application and provide all supporting documentation to the assessing authority for the jurisdiction where the qualifying principal place of residence (or motor vehicle) is located, DVS highly encourages localities to make every effort to make the tax exemption known to property owners by posting the eligibility criteria and a link to the application on their website, and to mail printed or electronic materials as appropriate.

In addition to the completed application, additional documents may be needed. Veterans who do not possess a VA Benefits Summary Letter indicating they are rated at 100% permanent and total or determined to be TDIU permanent and total (see samples Appendix M) should contact the Department of Veterans Affairs, their local Veterans Service Organization (for example, American Legion, Veterans of Foreign Wars, or many others), or a DVS Veterans Service Representative (<https://www.dvs.virginia.gov/dvs/locations>). If contacting the VA directly, the veteran may submit a VA Form 21-4138 (see example at Appendix N). Assessing officials should use the **effective date of the award**, found on the VA Benefits Summary Letter, not the date of the letter itself, as the VA mails letters to veterans annually.

Surviving spouses of service members killed in action or who died of wounds received in action will need to provide a copy of Department of Defense Form 1300, *Report of Casualty* (copy provided at Appendix O). This form must be obtained from the Department of Defense. We recommend contacting the deceased service member's last assigned unit or the assigned casualty assistance officer.

Surviving spouses of service members who died in the line of duty must provide a copy of the Department of Defense Line of Duty Determination. This document must be obtained from the Department of Defense. We recommend contacting the service member's assigned unit at the time of their death or the assigned casualty assistance officer.

Specific questions about a VA or DoD document may be sent to DVS. Email a scanned unredacted copy of the document to: info@dvs.virginia.gov, along with any questions. Please use the subject line: *Tax Exemption Application Question*.

When a veteran or surviving spouse applies for a tax exemption, the local tax authority should notify the applicant whether their application is complete or incomplete. When incomplete, the local tax official should notify the applicant of any missing information needed to make an eligibility determination. When the application is complete, the assessing official should inform the veteran in writing, by mail, whether they are exempt from the real estate or personal property tax and if exempted, the amount of the exemption; or if denied, the reason(s) for denial.

8. Appeals

A veteran or surviving spouse desiring to appeal the denial of their application for exemption by a Commissioner of the Revenue, or other assessing official, shall send a written request for appeal and the document from the veteran's respective Commissioner of Revenue or other assessing official, denying the veteran's application as follows:

- a. By electronic mail to: info@dvs.virginia.gov with a subject line that states ATTN: Tax Exemption – APPEAL; or
- b. By U.S. mail or delivery to Commissioner, Virginia Department of Veterans Services, ATTN: Tax Exemption – APPEAL, 101 N. 14th St., 17th Floor, Richmond, VA 23219

The DVS Commissioner may conduct hearings telephonically, by video conference, or if he/she determines it necessary, in person at DVS's Richmond's headquarters or, when appropriate, elsewhere in the Commonwealth. The appeal shall be limited to issues of fact involving the tax exemption eligibility criteria. The DVS Commissioner is not authorized to hear or decide issues of law or appeals regarding a dispute over a property's assessed value, as these matters are at the sole discretion of local authorities.

In advance of any hearing, the veteran or surviving spouse, and the Commissioner of the Revenue, or other assessing official, shall be provided: (i) reasonable notice of the time, date, and location of the hearing; (ii) the right to appear in person or with/by counsel, or other qualified representative, before the Commissioner; (iii) the right to present written and/or oral evidence and/argument in support of the case; and (iv) notice of all information in the possession of the Commissioner that could be relied on in making a decision.

The DVS Commissioner will render a decision within 90 calendar days from the date of the hearing, or from a later date agreed to by the veteran, or surviving spouse, and the DVS Commissioner. If the DVS Commissioner does not render a decision within 90 calendar days, the veteran may provide written notice to the Commissioner that a decision is due.

The decision by the DVS Commissioner is binding and final on state and local authorities. It will be mailed to all named parties in the appeal.

A decision of the DVS Commissioner may, however, be appealed by either party to the circuit court in the locality in which the veteran, or surviving spouse, resides (the location of the principal place of residence for which the

tax exclusion is sought). The burden shall be upon the party challenging of the DVS Commissioner's decision to demonstrate an error of law subject to review by the circuit court.

APPENDIX A

CONSTITUTION OF VIRGINIA ARTICLE X, SECTION 6A

Article X. Taxation and Finance

Section 6-A. Property Tax Exemption for Certain Veterans and their Surviving Spouses and Surviving Spouses of Soldiers Killed in Action

(a) Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, shall exempt from taxation the real property, including the joint real property of husband and wife, of any veteran who has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a one hundred percent service-connected, permanent, and total disability, and who occupies the real property as his or her principal place of residence. The General Assembly shall also provide this exemption from taxation for real property owned by the surviving spouse of a veteran who was eligible for the exemption provided in this subdivision, so long as the surviving spouse does not remarry. This exemption applies to the surviving spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence.

(b) Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, may exempt from taxation the real property of the surviving spouse of any member of the armed forces of the United States who was killed in action as determined by the United States Department of Defense, who occupies the real property as his or her principal place of residence. The exemption under this subdivision shall cease if the surviving spouse remarries and shall not be claimed thereafter. This exemption applies regardless of whether the spouse was killed in action prior to the effective date of this subdivision, but the exemption shall not be applicable for any period of time prior to the effective date. This exemption applies to the surviving spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence and without any requirement that the spouse reside in the Commonwealth at the time of death of the member of the armed forces.

The amendment ratified November 2, 2010, and effective January 1, 2011-Added a new section (6-A).

The amendment ratified November 4, 2014, and effective January 1, 2015-In the heading of the section added "and surviving spouses of soldiers killed in action"; inserted the designation "(a)" at the beginning, and substituted "in this subdivision" for "in this section" in the last sentence of the paragraph; and added a new paragraph (b).

The amendment ratified November 6, 2018, and effective January 1, 2019—In the heading of the section added "and their surviving spouses" after "veterans"; deleted "and continues to occupy the real property as his or her principal place of residence" and added "This exemption applies to the surviving spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence" at the end of subsection (a).

APPENDIX B

CODE OF VIRGINIA

§§ 58.1-3219.5

THROUGH

58.1-3219.12

**Code of Virginia § 58.1-3219.5
Exemption from Taxes on Property for Disabled Veterans**

A. Pursuant to subdivision (a) of Section 6-A of Article X of the Constitution of Virginia, and for tax years beginning on or after January 1, 2011, the General Assembly hereby exempts from taxation the real property, including the joint real property of married individuals, of any veteran who has been rated by the U.S. Department of Veterans Affairs or its successor agency pursuant to federal law to have a 100 percent service-connected, permanent, and total disability, and who occupies the real property as his principal place of residence. If the veteran's disability rating occurs after January 1, 2011, and he has a qualified primary residence on the date of the rating, then the exemption for him under this section begins on the date of such rating. However, no county, city, or town shall be liable for any interest on any refund due to the veteran for taxes paid prior to the veteran's filing of the affidavit or written statement required by § [58.1-3219.6](#). If the qualified veteran acquires the property after January 1, 2011, then the exemption shall begin on the date of acquisition, and the previous owner may be entitled to a refund for a pro rata portion of real property taxes paid pursuant to § [58.1-3360](#).

B. The surviving spouse of a veteran eligible for the exemption set forth in this article shall also qualify for the exemption, so long as the death of the veteran occurs on or after January 1, 2011, and the surviving spouse does not remarry. The exemption applies without any restriction on the spouse's moving to a different principal place of residence.

C. A county, city, or town shall provide for the exemption from real property taxes the qualifying dwelling pursuant to this section and shall provide for the exemption from real property taxes the land, not exceeding one acre, upon which it is situated. However, if a county, city, or town provides for an exemption from or deferral of real property taxes of more than one acre of land pursuant to Article 2 (§ [58.1-3210](#) et seq.), then the county, city, or town shall also provide an exemption for the same number of acres pursuant to this section. If the veteran owns a house that is his residence, including a manufactured home as defined in § [46.2-100](#) whether or not the wheels and other equipment previously used for mobility have been removed, such house or manufactured home shall be exempt even if the veteran does not own the land on which the house or manufactured home is located. If such land is not owned by the veteran, then the land is not exempt. A real property improvement other than a dwelling, including the land upon which such improvement is situated, made to such one acre or greater number of acres exempt from taxation pursuant to this subsection shall also be exempt from taxation so long as the principal use of the improvement is (i) to house or cover motor vehicles or household goods and personal effects as classified in subdivision A 14 of § [58.1-3503](#) and as listed in § [58.1-3504](#) and (ii) for other than a business purpose.

D. For purposes of this exemption, real property of any veteran includes real property (i) held by a veteran alone or in conjunction with the veteran's spouse as tenant or tenants for life or joint lives, (ii) held in a revocable inter vivos trust over which the veteran or the veteran and his spouse hold the power of revocation, or (iii) held in an irrevocable trust under which a veteran alone or in conjunction with his spouse possesses a life estate or an estate for joint lives or enjoys a continuing right of use or support. The term does not include any interest held under a leasehold or term of years.

The exemption for a surviving spouse under subsection B includes real property (a) held by the veteran's spouse as tenant for life, (b) held in a revocable inter vivos trust over which the surviving spouse holds the power of revocation, or (c) held in an irrevocable trust under which the surviving spouse possesses a life estate or enjoys a continuing right of use or support. The exemption does not apply to any interest held under a leasehold or term of years.

E. 1. In the event that (i) a person is entitled to an exemption under this section by virtue of holding the property in any of the three ways set forth in subsection D and (ii) one or more other persons have an ownership interest

in the property that permits them to occupy the property, then the tax exemption for the property that otherwise would have been provided shall be prorated by multiplying the amount of the exemption by a fraction that has as a numerator the number of people who are qualified for the exemption pursuant to this section and has as a denominator the total number of all people having an ownership interest that permits them to occupy the property.

2. In the event that the primary residence is jointly owned by two or more individuals, not all of whom qualify for the exemption pursuant to subsection A or B, and no person is entitled to the exemption under this section by virtue of holding the property in any of the three ways set forth in subsection D, then the exemption shall be prorated by multiplying the amount of the exemption by a fraction that has as a numerator the percentage of ownership interest in the dwelling held by all such joint owners who qualify for the exemption pursuant to subsections A and B, and as a denominator, 100 percent.

2011, cc. [769](#), [840](#); 2012, cc. [75](#), [263](#), [782](#), [806](#); 2014, c. [757](#); 2016, cc. [349](#), [393](#), [485](#); 2018, c. [236](#); 2019, cc. [15](#), [801](#); 2020, c. [900](#).

Code of Virginia § 58.1-3219.6

Application for Exemption

The veteran or surviving spouse claiming the exemption under this article shall file with the commissioner of the revenue of the county, city, or town or such other officer as may be designated by the governing body in which the real property is located, on forms to be supplied by the county, city, or town, an affidavit or written statement (i) setting forth the name of the disabled veteran and the name of the spouse, if any, also occupying the real property, (ii) indicating whether the real property is jointly owned by married individuals, and (iii) certifying that the real property is occupied as the veteran's principal place of residence. The veteran shall also provide documentation from the U.S. Department of Veterans Affairs or its successor agency indicating that the veteran has a 100 percent service-connected, permanent, and total disability. The veteran shall be required to refile the information required by this section only if the veteran's principal place of residence changes. In the event of a surviving spouse of a veteran claiming the exemption, the surviving spouse shall also provide documentation that the veteran's death occurred on or after January 1, 2011.

Code of Virginia § 58.1-3219.7

Commissioner of the Department of Veterans Services; Rules and Regulations; Appeal

A. The Commissioner of the Department of Veterans Services shall promulgate rules and regulations governing the administration and implementation of the property tax exemption under this article. Such rules and regulations shall include, but not be limited to, written guidance for veterans residing in the Commonwealth and for commissioners of the revenue or other assessing officers relating to the determination of eligibility for the property tax exemption under this article and procedures for appealing a decision of the Commissioner of the Department of Veterans Services to a circuit court pursuant to subsection B. The Commissioner of the Department of Veterans Services may also provide written guidance to, and respond to requests for information from, veterans residing in the Commonwealth and commissioners of the revenue or other assessing officers regarding the exemption under this article, including interpretation of the provisions of subdivision (a) of Section 6-A of Article X of the Constitution of Virginia and this article.

B. The Commissioner of the Department of Veterans Services shall hear and decide appeals by veterans residing in the Commonwealth from a denial of their application pursuant to § [58.1-3219.6](#) by a commissioner of the revenue or other assessing officer. However, such appeal shall be limited to appeals based upon a finding of fact regarding eligibility criteria set forth in subdivision (a) of Section 6-A of Article X of the Constitution of Virginia and this article. The Commissioner of the Department of Veterans Services shall not be authorized to hear or decide appeals regarding a dispute over the assessed value of any property. Nothing in this section shall be construed to limit the appeal of a decision of the Commissioner of the Department of Veterans Services by either party to the circuit court in the locality in which the veteran resides.

2012, c. [594](#); 2014, c. [757](#).

Code of Virginia § 58.1-3219.8
Absence from Residence

The fact that veterans or their spouses who are otherwise qualified for tax exemption pursuant to this article are residing in hospitals, nursing homes, convalescent homes, or other facilities for physical or mental care for extended periods of time shall not be construed to mean that the real estate for which tax exemption is sought does not continue to be the sole dwelling of such persons during such extended periods of other residence so long as such real estate is not used by or leased to others for consideration.

2012, c. [782](#).

Code of Virginia § 58.1-3219.9

Exemption from Taxes on Property of Surviving Spouses of Members of the Armed Forces Killed in Action

A. Pursuant to subdivision (b) of Section 6-A of Article X of the Constitution of Virginia, and for tax years beginning on or after January 1, 2015, the General Assembly hereby exempts from taxation the real property described in subsection B of the surviving spouse (i) of any member of the armed forces of the United States who was killed in action as determined by the U.S. Department of Defense and (ii) who occupies the real property as his principal place of residence. For purposes of this section, such determination of "killed in action" includes a determination by the U.S. Department of Defense of "died of wounds received in action." If such member of the armed forces of the United States is killed in action after January 1, 2015, and the surviving spouse has a qualified principal residence on the date that such member of the armed forces is killed in action, then the exemption for the surviving spouse shall begin on the date that such member of the armed forces is killed in action. However, no county, city, or town shall be liable for any interest on any refund due to the surviving spouse for taxes paid prior to the surviving spouse's filing of the affidavit or written statement required by § [58.1-3219.10](#). If the surviving spouse acquires the property after January 1, 2015, then the exemption shall begin on the date of acquisition, and the previous owner may be entitled to a refund for a pro rata portion of real property taxes paid pursuant to § [58.1-3360](#).

B. Those dwellings in the locality with assessed values in the most recently ended tax year that are not in excess of the average assessed value for such year of a dwelling situated on property that is zoned as single family residential shall qualify for a total exemption from real property taxes under this article. If the value of a dwelling is in excess of the average assessed value as described in this subsection, then only that portion of the assessed value in excess of the average assessed value shall be subject to real property taxes, and the portion of the assessed value that is not in excess of the average assessed value shall be exempt from real property taxes. Single family homes, condominiums, town homes, manufactured homes as defined in § [46.2-100](#) whether or not the wheels and other equipment previously used for mobility have been removed, and other types of dwellings of surviving spouses, whether or not the land on which the single family home, condominium, town home, manufactured home, or other type of dwelling of a surviving spouse is located is owned by someone other than the surviving spouse, that (i) meet this requirement and (ii) are occupied by such persons as their principal place of residence shall qualify for the real property tax exemption. If the land on which the single family home, condominium, town home, manufactured home, or other type of dwelling is located is not owned by the surviving spouse, then the land is not exempt.

For purposes of determining whether a dwelling, or a portion of its value, is exempt from county and town real property taxes, the average assessed value shall be such average for all dwellings located within the county that are situated on property zoned as single family residential.

C. The surviving spouse of a member of the armed forces killed in action shall qualify for the exemption so long as the surviving spouse does not remarry. The exemption applies without any restriction on the spouse's moving to a different principal place of residence.

D. A county, city, or town shall provide for the exemption from real property taxes (i) the qualifying dwelling, or the portion of the value of such dwelling and land that qualifies for the exemption pursuant to subsection B, and (ii) except land not owned by the surviving spouse, the land, not exceeding one acre, upon which it is situated. However, if a county, city, or town provides for an exemption from or deferral of real property taxes of more than one acre of land pursuant to Article 2 (§ [58.1-3210](#) et seq.), then the county, city, or town shall also

provide an exemption for the same number of acres pursuant to this section. A real property improvement other than a dwelling, including the land upon which such improvement is situated, made to such one acre or greater number of acres exempt from taxation pursuant to this subsection shall also be exempt from taxation so long as the principal use of the improvement is (i) to house or cover motor vehicles or household goods and personal effects as classified in subdivision A 14 of § [58.1-3503](#) and as listed in § [58.1-3504](#) and (ii) for other than a business purpose.

E. For purposes of this exemption, real property of any surviving spouse of a member of the armed forces killed in action includes real property (i) held by a surviving spouse as a tenant for life, (ii) held in a revocable inter vivos trust over which the surviving spouse holds the power of revocation, or (iii) held in an irrevocable trust under which the surviving spouse possesses a life estate or enjoys a continuing right of use or support. The term does not include any interest held under a leasehold or term of years.

F. 1. In the event that (i) a surviving spouse is entitled to an exemption under this section by virtue of holding the property in any of the three ways set forth in subsection E and (ii) one or more other persons have an ownership interest in the property that permits them to occupy the property, then the tax exemption for the property that otherwise would have been provided shall be prorated by multiplying the amount of the exemption by a fraction that has 1 as a numerator and has as a denominator the total number of all people having an ownership interest that permits them to occupy the property.

2. In the event that the principal residence is jointly owned by two or more individuals including the surviving spouse, and no person is entitled to the exemption under this section by virtue of holding the property in any of the three ways set forth in subsection E, then the exemption shall be prorated by multiplying the amount of the exemption by a fraction that has as a numerator the percentage of ownership interest in the dwelling held by the surviving spouse, and as a denominator, 100 percent.

2014, c. [757](#); 2015, c. [577](#); 2016, cc. [347](#), [349](#), [393](#), [485](#), [539](#); 2019, cc. [15](#), [801](#).

Code of Virginia § 58.1-3219.10

Application for Exemption

A. The surviving spouse claiming the exemption under this article shall file with the commissioner of the revenue of the county, city, or town or such other officer as may be designated by the governing body in which the real property is located, on forms to be supplied by the county, city, or town, an affidavit or written statement (i) setting forth the surviving spouse's name, (ii) indicating any other joint owners of the real property, and (iii) certifying that the real property is occupied as the surviving spouse's principal place of residence. The surviving spouse shall also provide documentation from the United States Department of Defense or its successor agency indicating the date that the member of the armed forces of the United States was killed in action. The surviving spouse shall be required to refile the information required by this section only if the surviving spouse's principal place of residence changes.

B. The surviving spouse shall promptly notify the commissioner of the revenue of any remarriage.

2014, c. [757](#).

Code of Virginia § 58.1-3219.11

Commissioner of the Department of Veterans Services; Rules and Regulations

The Commissioner of the Department of Veterans Services shall promulgate rules and regulations governing the administration and implementation of the property tax exemption under this article. Such rules and regulations shall include, but not be limited to, written guidance for surviving spouses residing in the Commonwealth and for commissioners of the revenue or other assessing officers relating to the determination of eligibility for the property tax exemption under this article. The Commissioner of the Department of Veterans Services may also provide written guidance to, and respond to requests for information from, surviving spouses residing in the Commonwealth and commissioners of the revenue or other assessing officers regarding the exemption under this article, including interpretation of the provisions of subdivision (b) of Section 6-A of Article X of the Constitution of Virginia and this article.

2014, c. [757](#).

Code of Virginia § 58.1-3219.12
Absence from Residence

The fact that surviving spouses who are otherwise qualified for tax exemption pursuant to this article are residing in hospitals, nursing homes, convalescent homes, or other facilities for physical or mental care for extended periods of time shall not be construed to mean that the real estate for which tax exemption is sought does not continue to be the sole dwelling of such persons during such extended periods of other residence so long as such real estate is not used by or leased to others for consideration.

APPENDIX C

CODE OF VIRGINIA

§ 58.1-3228.2

Code of Virginia § 58.1-3228.2
Classification of Real Property
Owned by Certain Surviving Spouses
for Tax Purposes

A. For taxable years beginning on or after January 1, 2022, any real property owned by a surviving spouse of a member of the Armed Forces of the United States who died in the line of duty with a line of duty determination from the U.S. Department of Defense, where such death was not the result of criminal conduct, and where such spouse occupies the real property as his principal place of residence and does not remarry may be declared and classified as a separate class of property and shall constitute a separate classification for local taxation of real property.

B. The governing body of such locality may by ordinance levy a tax on the property described in subsection A at a different rate than the tax imposed upon other real property, provided that the rate of tax on the property described in subsection A shall not be zero and shall not exceed the rate of tax on other real property.

C. Nothing in this section shall be construed to permit a locality to alter in any way its valuation of real property covered by this section.

D. Nothing in this section shall be construed to restrict the surviving spouse from moving to a different principal place of residence and without any requirement that the surviving spouse reside in the Commonwealth at the time of death of the member of the Armed Forces of the United States.

APPENDIX D

CODE OF VIRGINIA

§ 58.1-3668

MOTOR VEHICLE OF A DISABLED VETERANS

Code of Virginia §58.1-3668 Motor Vehicle of a Disabled Veteran

- A. As used in this section, "motor vehicle" means only a passenger car or a pickup or panel truck, as those terms are defined in § [46.2-100](#), that is registered for personal use.
- B. Pursuant to subdivision (a) (8) of Article X, Section 6 of the Constitution of Virginia, one motor vehicle owned and used primarily by or for a veteran of the Armed Forces of the United States or the Virginia National Guard who has been rated by the U.S. Department of Veterans Affairs or its successor agency pursuant to federal law with a 100 percent service-connected, permanent, and total disability shall be exempt from taxation. Any such motor vehicle owned by a married person may qualify if either spouse is a veteran who is rated as 100 percent disabled. Any locality may establish procedures for a veteran to apply for the exemption and may enact any ordinance necessary for administration of the exemption.
- C. This exemption shall be applicable beginning on the date the motor vehicle is acquired or January 1, 2021, whichever is later, and shall not be applicable for any period of time prior to January 1, 2021. The exemption shall expire on the date of the disabled veteran's death and shall not be available for his surviving spouse.
- D. The provisions of § [58.1-3980](#) shall apply to the exemption granted pursuant to this section.

APPENDIX E

LEGISLATIVE HISTORY

Legislative History

2009

In 2009, several initial resolutions proposed to amend the Constitution of Virginia, establishing a real estate tax exemption for 100% service-connected, permanent and totally disabled veterans and their qualifying surviving spouses. Among the resolutions were: HJ648 (O'Bannon), incorporating HJ669 (Janis), and SJ275 (Puller), incorporating SJ304 (Stuart).

2010

In 2010, HJ33/HB149 (O'Bannon) and SJ13/SB31 (Puller) passed and were signed by Governor Tim Kaine, which placed the issue on the ballot. On November 2, 2010, the citizens of the Commonwealth of Virginia ratified a proposed Constitutional amendment, approving Section 6-A to the Constitution of Virginia:

Section 6-A. Property Tax Exemption for Certain Veterans.

Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, shall exempt from taxation the real property, including the joint real property of husband and wife, of any veteran who has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a one hundred percent service-connected, permanent, and total disability, and who occupies the real property as his or her principal place of residence. The General Assembly shall also provide this exemption from taxation for real property owned by the surviving spouse of a veteran who was eligible for the exemption provided in this section, so long as the surviving spouse does not remarry and continues to occupy the real property as his or her principal place of residence.

The amendment exempts from the real property tax the principal place of residence owned either individually or jointly, of those Virginians who, in the line of duty, while serving in the Armed Forces of the United States, were injured to the extent that they were rated by the United States Department of Veterans Affairs as having a 100%, service-connected, permanent, and total disability.

2011

In 2011, the General Assembly passed enabling legislation (HB1645 (O'Bannon) and SB987 (Puller)), which amended the Code of Virginia, Title 58.1, Chapter 32 to implement the approved tax exemption.

During the 2011 tax year, a number of unanticipated issues were identified by local officials. Some questions were referred to the Attorney General for advisory opinions. The Hampton Commissioner of the Revenue requested guidance regarding the effect of the emergency clause, requiring the effective date of implementation to be January 1, 2011, on those jurisdictions that operate on a July to June tax year. The Attorney General's opinion can be found in Appendix X.

Subsequently, members of the Commissioners of the Revenue Association developed and submitted a series of questions to Delegate Scott Lingamfelter. Those questions were consolidated with additional questions posed by

Delegate John O'Bannon, Senator Todi Puller and Senator Stephen Newman, and submitted to the Attorney General in May 2011. On July 15, 2011, the Attorney General provided guidance to proceed with application of Article X Section 6-A as ratified (Appendix X). This AG Opinion is the basis for current interpretation.

2012

In 2012, the legislature determined additional refinements were needed to the enabling statutes. Some of the specific issues needing clarification included: whether an *inter vivos* trust created by the otherwise qualified veteran would suffice to qualify a surviving spouse; whether an otherwise qualifying veteran could claim exemption if absent from the principal residence due to long-term medical care; and the method for proration of taxes for the qualified veteran upon initial qualification and subsequent purchases of a principal residence.

To provide clarification, the 2012 Virginia General Assembly passed several bills: HB922 (Lingamfelter) and SB540 (Puller), incorporating SB529 (Marsden) addressed the trust issue; HB933 (Lingamfelter) addressed the absence from residence; and SB22 (Stuart) addressed the proration issues.

In addition, the 2012 General Assembly passed HB190 (O'Bannon), which directs the Commissioner of the Virginia Department of Veteran Services (DVS) to promulgate rules and regulations governing the administration and implementation of the veteran's property tax exemption (Code of Virginia § 58.1-3219.7). The mandated rules and regulations must include written guidance for veterans residing in the Commonwealth, and for Commissioners of the Revenue, or other assessing officers, relating to the determination of eligibility for the property tax exemption, procedures for noting an appeal to a denial of a request for exemption to the DVS Commissioner, and procedures for appealing a decision of the DVS Commissioner to a circuit court.

The DVS Commissioner promulgated and published the regulations in the Virginia Administrative Code (VAC) for §58.1-3219.5 – 1VAC80-10 *et. seq.*; and §58.1-3219.9 – 1VAC80-20 *et seq.*

Per Code of Virginia § 58.1-3219.7, the DVS Commissioner may also provide advisory guidance in response to requests for information from veterans residing in the Commonwealth, and Commissioners of the Revenue or other assessing officials regarding the exemption under § 58.1-3219.5, including interpreting the provisions of Article X, Section 6-A of the Constitution of Virginia.

2013

In 2013, recognizing that the surviving spouses of active-duty military killed in action were not included in the Constitutional amendment, Del. David Ramadan proposed HJ551 to remedy the oversight. The bill provided:

Section 6-A. Property Tax Exemption for Certain Veterans *and Surviving Spouses of Soldiers Killed in Action.*

(a) Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, shall exempt from taxation the real property, including the joint real property of husband and wife, of any veteran who has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a one hundred percent service-connected, permanent, and total disability, and who occupies the real property as his or her principal place of residence. The General Assembly shall also provide this exemption from taxation for real property owned by the surviving spouse of a veteran who was eligible for the exemption provided

in this section *subdivision*, so long as the surviving spouse does not remarry and continues to occupy the real property as his or her principal place of residence. *(b) Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, may exempt from taxation the real property of the surviving spouse of any member of the armed forces of the United States who was killed in action as determined by the United States Department of Defense, who occupies the real property as his or her principal place of residence. The exemption under this subdivision shall cease if the surviving spouse remarries and shall not be claimed thereafter. This exemption applies regardless of whether the spouse was killed in action prior to the effective date of this subdivision, but the exemption shall not be applicable for any period of time prior to the effective date. This exemption applies to the surviving spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence and without any requirement that the spouse reside in the Commonwealth at the time of death of the member of the armed forces.* (New amending language in italics).

2014

In 2014, HJ8 (Ramadan) was passed and was signed by Governor Robert McDonnell, placing the issue before the voters in the November 2014 election. On November 4, 2014, the citizens of the Commonwealth of Virginia ratified the proposed amendment.

2015

In 2015, the General Assembly passed the enabling legislation, HB1721 (Ramadan), which amended Title 58.1, Chapter 32, and implemented the expanded tax exemption. See Code of Virginia § 58.1-3219.9. Note that the legislation established the qualifying date of the amendment as January 1, 2015, rather than the original qualifying date of January 1, 2011.

2016

In 2016, the General Assembly determined refinements were needed to the Code of Virginia § 58.1-3219.7 to provide clarification concerning the scope of eligibility of service members who die of wounds resulting from combat (i.e., in route to a field or military hospital). Newly introduced HB127 (Knight) and SB99 (Cosgrove) proposed to clarify that active duty service members who die of wounds resulting from combat are covered under the definition of “killed in action (KIA).” The U.S. Department of Defense refers to this situation as “died of wounds received in action (DOW).” This means that a surviving spouse of a soldier, sailor, marine or airman who is wounded in combat **and** while **in transport** dies of said wounds **before** reaching the medical facilities qualifies for the exemption under § [58.1 3219.9](#). The proposed legislation clarified, but did not fundamentally alter, the Constitutional amendment, and therefore, did not need approval of the Virginia voters. Governor Terry McAuliffe signed the legislation and it was incorporated into Code of Virginia § [58.1 3219.9](#) on July 1, 2016. The eligibility applied retroactively to the qualifying date in the original Constitutional amendment (January 1, 2015).

Addition, the 2016 General Assembly passed several other pieces of legislation clarifying the parameters of, but not fundamentally altering, both Code of Virginia §§ [58.1-3219.5](#) and [58.1 3219.9](#):

SB366 (Chafin) and HB1203 (Yost) allowed for manufactured homes, as defined in Code of Virginia § [46.2-100](#), to be included in the exemption, provided all the other qualifications are met, including proof of primary residency. The manufactured home qualifies whether the wheels and other equipment previously used for mobility

have been removed. However, if the land is not owned by the veteran, then the land itself is not exempt, only the manufactured home.

HB421 (Helsel) allowed for inclusion in the exemption of improvements to be made to “other than the dwelling,” including the land upon which the improvement is situation – so long as “the principal use of the improvement is; (i) to house or cover motor vehicles or household goods and personal effects as classified in subdivision A 14 of § [58.1-3503](#) and as listed in § [58.1-3504](#) and (ii) for other than a business purpose.” This means that a veteran or surviving spouse who qualifies for the real property tax exemption and who builds or modifies or improves upon a car port, garage, storage shed or other structure for the housing or covering of a motor vehicle or certain household goods as classified in the listed Code can include those improvements in the exemption from taxation. This does not include other improvements to the land or for building or modifying structures that do not meet this narrow distinction. For example, it does not include building guest houses, free-standing offices, additional residences, pools or spas, etc.

The amendment for the real estate tax exemption for surviving spouses of those killed in action provided for the ability of surviving spouses to move to a different place of residence and keep the tax exemption, a benefit not extended to the surviving spouses of 100% service-connected, permanent and totally disabled veterans.

2017

In 2017, an initial resolution to conform the two sections of the Code to allow all surviving spouses the exemption without any restriction on moving to a new principal place of resident was offered as HJ562 (Miyares), which incorporated HJ697 (Byron) and reads:

Proposing an Amendment to Section 6-A of Article X of the Constitution of Virginia, Relating to Real Property Tax; Exemption.

Property tax exemption for certain veterans *and their surviving spouses* and surviving spouses of soldiers killed in action. (a) Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, shall exempt from taxation the real property, including the joint real property of husband and wife, of any veteran who has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a one hundred percent service-connected, permanent, and total disability, and who occupies the real property as his or her principal place of residence. The General Assembly shall also provide this exemption from taxation for real property owned by the surviving spouse of a veteran who was eligible for the exemption provided in this section, so long as the surviving spouse does not remarry and continues to occupy the real property as his or her principal place of residence. *This exemption applies to the surviving spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence.* (b) Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, may exempt from taxation the real property of the surviving spouse of any member of the armed forces of the United States who was killed in action as determined by the United States Department of Defense, who occupies the real property as his or her principal place of residence. The exemption under this subdivision shall cease if the surviving spouse remarries and shall not be claimed thereafter. This exemption applies regardless of whether the spouse was killed in action prior to the effective date of this subdivision, but the exemption shall not be applicable for any period of time prior to the effective date. This exemption applies to the surviving

spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence and without any requirement that the spouse reside in the Commonwealth at the time of death of the member of the armed forces. (New amending language in italics).

2018

In 2018, Delegate Jason Miyares and Senator Richard Stuart introduced HB792/HJ6 and SJ76. They passed and were signed by Governor Terry McAuliffe. The proposed Constitutional amendment was passed overwhelmingly by Virginia voters on November 8, 2018.

2019

In 2019, Delegate Miyares and Senator Stuart proposed the enabling legislation, HB1655 and SB1270. The legislation did not amend the original enactment date, or any of the other regulations. HB 1655 and SB1270 were signed by Governor Ralph Northam before the legislative session ended.

As such, Code of Virginia §§ 58.1-3219.5, 58.1-3219.9, and 58.1-3219.14 of the Code of Virginia were amended and reenacted as follows:

§ 58.1-3219.5. Exemption from taxes on property for disabled veterans

B. The surviving spouse of a veteran eligible for the exemption set forth in this article shall also qualify for the exemption, so long as the death of the veteran occurs on or after January 1, 2011, and the surviving spouse does not remarry. The exemption applies without any restriction on the spouse's moving to a different principal place of residence.

F. 2. That the provisions of this act shall apply to taxable years beginning on and after January 1, 2019.

Additionally, the legislators included a final paragraph to assist those surviving spouses who had lost the exemption due to moving to a new locality. It held:

3. That if a surviving spouse was eligible for an exemption pursuant to the provisions of 206 § 58.1-3219.5 of the Code of Virginia prior to January 1, 2019, but became ineligible for such exemption prior to January 1, 2019, solely because he moved to a different principal place of residence, then he shall be eligible to claim such exemption for taxable years beginning on and after January 1, 2019, so long as he is eligible for such exemption pursuant to the provisions of § 58.1-3219.5 of the Code of Virginia, as amended by this act.

However, localities do not have to reimburse qualified surviving spouses for intervening years. The new provision does not back date the exemption to time of loss, it only reinstates the exemption moving forward.

Additionally, the enabling legislation was also used as a means to clarify and amend Article X, Section 6-B of the Constitution of Virginia, and § 58.1-3219.14 of the Code of Virginia.

2020

In response to the Supreme Court of the United States' opinion in *Obergefell v. Hodges*, 576 U.S. 644 (2015), delegate Marcus Simon proposed HB 623 to establish gender-neutral terms throughout the Code of Virginia. The legislation passed the General Assembly and was signed into law by Governor Terry McAuliffe, with an effective date of August 1, 2020.

2021

In 2021, via SB 1130 (Reeves), the General Assembly proposed, and Governor Terry McAuliffe signed legislation creating a personal property tax exemption with an effective date on January 1, 2021 for one motor vehicle of a 100% total and permanent, disabled veteran.

The Code of Virginia was amended by adding in Article 5 of Chapter 36 of Title 58.1 ([58.1-3668](#)) as follows:

§ [58.1-3668](#). Motor Vehicle of a Disabled Veteran.

A. As used in this section, "motor vehicle" means only a passenger car or a pickup or panel truck, as those terms are defined in § [46.2-100](#), that is registered for personal use.

B. Pursuant to subdivision (a) (8) of Article X, Section 6 of the Constitution of Virginia, one motor vehicle owned and used primarily by or for a veteran of the Armed Forces of the United States or the Virginia National Guard who has been rated by the U.S. Department of Veterans Affairs or its successor agency pursuant to federal law with a 100 percent service-connected, permanent, and total disability shall be exempt from taxation. Any such motor vehicle owned by a married person may qualify if either spouse is a veteran who is rated as 100 percent disabled. Any locality may establish procedures for a veteran to apply for the exemption and may enact any ordinance necessary for administration of the exemption.

C. This exemption shall be applicable beginning on the date the motor vehicle is acquired or January 1, 2021, whichever is later, and shall not be applicable for any period of time prior to January 1, 2021. The exemption shall expire on the date of the disabled veteran's death and shall not be available for his surviving spouse.

D. The provisions of § [58.1-3980](#) shall apply to the exemption granted pursuant to this section.

2022

In 2022 HB 957 (Tran) was introduced to allow localities to provide a tax exemption for surviving spouses of service members who died in the line of duty, as determined by the Department of Defense. Having passed the General Assembly, on April 5, 2022, Governor Glen Youngkin signed the legislation into law. Code of Virginia Taking effect during tax years beginning January 1, 2022, the legislation does not mandate the tax exemption. Rather, it allows localities to create a lower tax rate.

Code of Virginia § 58.1-3228.2 - *Relating to Classification of Real Property Owned by Certain Surviving Spouses for Tax Purposes* provides:

1. That the Code of Virginia is amended by adding in Article 3 of Chapter 32 of Title 58.1 a section numbered [58.1-3228.2](#) as follows:

§ **58.1-3228.2**. *Classification of real property owned by certain surviving spouses for tax purposes.*

For taxable years beginning on or after January 1, 2022, any real property owned by a surviving spouse of a member of the Armed Forces of the United States who died in the line of duty with a line of duty determination from the U.S. Department of Defense, where such death was not the result of criminal conduct, and where such spouse occupies the real property as his principal place of residence and does not remarry may be declared and classified as a separate class of property and shall constitute a separate classification for local taxation of real property.

A. The governing body of such locality may by ordinance levy a tax on the property described in subsection A at a different rate than the tax imposed upon other real property, provided that the rate of tax on the property described in subsection A shall not be zero and shall not exceed the rate of tax on other real property.

B. Nothing in this section shall be construed to permit a locality to alter in any way its valuation of real property covered by this section.

C. Nothing in this section shall be construed to restrict the surviving spouse from moving to a different principal place of residence and without any requirement that the surviving spouse reside in the Commonwealth at the time of death of the member of the Armed Forces of the United States.

2023

In 2023 SJ231 (McPike) introduced a Constitutional Amendment (first reference); to expand tax exemption for real property available to the surviving spouses of soldiers killed in action to the surviving spouses of soldiers who died in the line of duty with a Line of Duty determination from the U.S. Department of Defense. An identical resolution must pass in 2024 in order to be on the ballot in the November 2024 General Election.

In 2023 HB2414 (Scott) was introduced to allow a disabled veteran or surviving spouse to apply for a real property tax exemption and receive a decision prior to purchasing a qualifying property. Having passed the General Assembly on March 2, 2023, Governor Glen Youngkin signed the legislation into law effective July 1, 2023.

§ **58.1-3219.6**. *Application for exemption.*

The veteran or surviving spouse may claim the exemption under this article prior to purchasing the qualifying dwelling by filing the documentation as required by subsection A and valid documentation of the purchase agreement for the qualifying dwelling. The commissioner of the revenue of the county, city, or town, or such other officer as may be designated by the governing body in which the real property is located, shall, within 20 business days following receipt of such documentation, process the application and send the veteran a letter stating whether the application is approved or denied. If the application is approved, the letter shall also include the amount of the tax exemption for the qualifying property the veteran intends to purchase. However, the exemption described in such a letter shall become effective only after the veteran becomes the owner of the property.

Final Notes

All legislation in this section can be found on Virginia's Legislative Information System (LIS) at lis.virginia.gov. All hyperlinks are to the Code of Virginia website.

Any questions about the legislation history should be directed to the Department of Veterans Services at info@dvs.virginia.gov.

APPENDIX F

DVS REGULATION

1 VAC AGENCY NO. 80

CHAPTER 10

VETERANS AND SURVIVING SPOUSES



IVAC AGENCY NO. 80
DEPARTMENT OF VETERANS SERVICES
CHAPTER 10
100 PERCENT DISABLED VETERAN REAL PROPERTY TAX EXEMPTION

It is promulgated under the authority of Code of Virginia § 58.1-3219.7, which states, in part:

The Commissioner of the Department of Veterans Services shall promulgate rules and regulations governing the administration and implementation of the property tax exemption under this article. Such rules and regulations shall include, but not be limited to, written guidance for veterans residing in the Commonwealth and for commissioners of the revenue or other assessing officers relating to the determination of eligibility for the property tax exemption under this article and procedures for appealing a decision of the Commissioner of the Department of Veterans Services to a circuit court....

Questions regarding these regulations should be directed to the Department of Veterans Services at: info@dvs.virginia.gov.

IVAC80-10-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

“Commissioner” means the Commissioner of the Department of Veterans Services.

“Department” means the Virginia Department of Veterans Services.

“Dwelling” means the single structure, including any permanent attachments thereto, that is the principal place of residence of the qualifying veteran or surviving spouse.

“Exemption” means the exemption from real property taxes authorized by subdivision (a) of Section 6-A of Article X of the Constitution of Virginia and § 58.1-3219.5 of the Code of Virginia.

“Motor Vehicle” means a passenger car or a pickup or panel truck, as those terms are defined in Code of Virginia § 46.2-100, that is registered for personal use.

“Qualified veteran” is a veteran who has been rated by the U.S. Department of Veterans Affairs, or any successor agency, to have a 100 percent service-connected, permanent and total disability. If a 100 percent disability rating is not permanent (i.e., has not been finally adjudicated or is scheduled for reviewed at a future date), eligibility is not established..

“Surviving spouse” is the spouse of any member or former member of the armed forces of the United States as determined by the U.S. Department of Defense, who has been rated by the U.S. Department of Veterans Affairs, or any successor agency, to have a 100 percent service-connected, permanent and total disability.

“Real property” is land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land, and the dwelling ordinarily occupied by the qualified veteran or surviving spouse.

“VA” means the United States Department of Veterans Affairs or any successor agency.

1VAC80-10-20. Real Property Exempt from Taxation.

A. The dwelling that is the principal residence of a qualified veteran, plus up to one acre of land, or more than one acre if a given locality has exempted such larger acreage pursuant to § 58.1-3210 of the Code of Virginia shall be exempt from taxation. The exemption extends to real property improvements other than a dwelling, including the land upon which such improvements is situated, so long as the principal use of the improvement is (i) to house or cover motor vehicles or household goods and other personal effects as classified in subdivision A 14 of § 58.1-3503 of the Code of Virginia and as listed in § 58.1-3504 of the Code of Virginia and (ii) for other than a business purpose.

B. Manufactured homes, as defined in § 46.2-100 of the Code of Virginia, regardless of whether the wheels and other equipment previously used for mobility have been removed, shall be exempt after the qualifying veteran has titled the home in the Commonwealth and has established proof of ownership. Code of Virginia §§ 58.1-3219.5 and 58.1-3219.9 provide the only instances when manufactured homes may be classified as real property. If the veteran does not own the land on which the manufactured home is located, then the land is not exempt. The veteran or spouse must meet all other provisions of § 58.1-3219.5.

Statutory Authority: § 58.1-3219.5 of the Code of Virginia.

1VAC80-10-30. Full Exemption; Joint Ownership; Trusts.

A. The full exemption is authorized when the dwelling and land are held by a veteran alone or in conjunction with the veteran’s spouse as tenant or tenants for life or joint lives. The exemption does not apply if the qualified veteran is not on the deed, except when the real property is held in one of the trusts listed in subsection B of this section.

B. Trusts – The full exemption is authorized when the real property is held in one of the following trusts: 1) revocable *inter vivos* trust over which the veteran or the veteran and his or her spouse hold the power of revocation, or 2) an irrevocable trust under which a veteran alone or in conjunction with his or her spouse possesses a life estate or an estate for joint lives or enjoys a continuing right of use or support. The exemption does not apply to any other forms of trust or any interest held under a leasehold or term of years.

1VAC80-10-40. Partial Exemptions.

A. If the veteran is rated 100% disabled, permanent and total, after January 1, 2011, and the veteran owns a qualified primary residence on the date of the rating, then the tax exemption begins on the date of such rating.

B. Pursuant to § 58.1-3360 of the Code of Virginia, if the qualified veteran acquires the property after January 1, 2011, then the exemption shall begin on the date of acquisition, and the previous owner may be entitled to a refund for a *pro rata* portion of real property taxes paid.

1VAC80-10-50. Surviving Spouse Exemption.

A. The surviving spouse of a veteran eligible for the exemption shall also qualify for the exemption, so long as:

- a. The death of the qualified veteran occurs on or after January 1, 2011;
- b. The surviving spouse was married to the qualified veteran at the time of the veteran's death;
- c. The surviving spouse does not remarry; and
- d. The veteran was eligible for the exemption at the time of death. This exemption applies even if the qualifying veteran never requested it during their lifetime.

B. The exemption for a surviving spouse includes real property (a) held by the veteran's spouse as tenant for life, (b) held in a revocable *inter vivos* trust over which the surviving spouse holds the power of revocation, or (c) held in an irrevocable trust under which the surviving spouse possesses a life estate or enjoys a right of use or support. The exemption does not apply to any other forms of trust or any interest held under a leasehold or term of years.

1VAC80-10-60. Proration When Not All Owners Qualify for the Exemption.

In the event that the primary residence is jointly owned by two or more individuals, not all of whom qualify for the exemption pursuant to subsection A or B of §§ 58.1-3219.5 and 58.1-3219.9 of the Code of Virginia, and no person is entitled to the exemption under this section by virtue of holding the property in any of the three ways set forth in subsection D, then the exemption shall be prorated by multiplying the amount of the exemption or deferral by a fraction that has as a numerator the percentage of ownership interest in the dwelling held by all such joint owners who qualify for the exemption pursuant to subsections A and B, and as a denominator, 100 percent. Example: If two persons (surviving spouse and adult child) jointly own the qualified primary residence, but only the surviving spouse is entitled to the exemption, then the tax entitlement will be prorated by 50%.

Statutory Authority: § 58.1-3211.1 of the Code of Virginia.

1VAC80-10-70. Cooperative Associations.

The exemption does not apply to property owned by a cooperative association or any other form of ownership in which the qualified veteran or surviving spouse does not actually own the real property other than in trust as detailed in **1VAC80-10-30**.

1VAC80-10-80. Qualified Veterans and Surviving Spouses Residing in Hospitals, Nursing Homes, Convalescent Homes or Other Care Facilities.

If the qualified veteran or surviving spouse is residing in a hospital, nursing home, convalescent home, or other facility for physical or mental care for extended periods of time, the exemption will continue on the property so long as such real estate is not used by or leased to others for consideration.

Statutory Authority: § 58.1-3219.8 of the Code of Virginia

1VAC80-10-90. Application.

A **veteran** claiming the real property tax exemption shall file with the Commissioner of the Revenue, or other assessing official, in the veteran's respective locality:

- a. A Summary of Benefits letter issued by the VA, or its successor agency, indicating that the veteran has a 100% service-connected, permanent and total disability;
- b. An affidavit or application on a form provided by the locality that:
 - i. Sets forth the name of the veteran and the name of the spouse, if any, also occupying the real property;
 - ii. Provides the physical address of the real property for which the exception is sought; and
 - iii. Certifies that the real property is occupied as the veteran's principal place of residence;**and**
- c. Proof of residency acceptable to the applicable locality, such as a valid Virginia driver's license, mortgage or utility statements in the veteran's name, or other proof of residency acceptable to the locality.

B. A **surviving spouse of a veteran** claiming the real property tax exemption shall file with the Commissioner of the Revenue, or other assessing official, in her/his respective locality:

- a. A summary of benefits letter issued by the VA, or its successor agency, indicating that the veteran had a 100% service-connected, permanent and total disability;
- b. An affidavit or application on a form provided by the locality that:
 - i. Sets forth the name of the deceased veteran and the name of the spouse;
 - ii. Provides the physical address of the real property for which the exception is sought;
 - iii. Indicates whether the real property is jointly owned by the two spouses; and
 - iv. Certifies that the real property is occupied as the surviving spouse's principal place of residence;
- c. Proof of residency acceptable to the applicable locality, such as a valid Virginia driver's license, mortgage or utility statements in the veteran's name, or other proof of residency acceptable to the locality;
- d. A death certificate establishing the veteran's date of death occurred on or after January 1, 2011; **and**
- e. A certificate of marriage from the appropriate state office of records.

C. The veteran or surviving spouse may complete the local tax exemption application before receipt of the VA Summary of Benefits letter. The Commissioner of Revenue, or other assessing official, shall ensure that the veteran is aware the application is not complete without the required VA letter establishing the qualifying disability. When the application is complete, the assessing official shall inform the veteran or surviving spouse in writing by mail whether the application is approved, and if exempted, the amount of the exemption. If the request for tax exclusion is denied, the Commissioner of Revenue or other assessing official, should notify the requester in writing by mail of the reason(s) for such denial.

D. The veteran or surviving spouse shall be required to re-file the application, providing all information required by this section, only if the principal place of residence changes.

E. After a disabled veteran, or the surviving spouse of a disabled veteran, has provided the required affidavit or written statement declaring compliance with all applicable requirements for the tax exemption, it is the responsibility of the Commissioner of the Revenue or assessing official to correct and refund (without interest) the assessments of an initially qualified applicant retroactively. There remains no deadline to apply for the exemption.

F. No county, city, or town shall be liable for any interest on any refund due to the veteran or surviving spouse for taxes paid prior to the filing of the application.

G. No locality may implement income or asset limitations or a deadline for filing an application for tax relief.

H. This chapter does not prohibit the locality's ability to require an annual confirmation of continued residence from the qualifying veteran or surviving spouse.

Statutory Authority: § 58.1-3219.6 of the Code of Virginia.

1VAC80-10-100. Informal Requests for Information

A. The Commissioner will provide written guidance to and respond to requests for information from veterans residing in the Commonwealth, Commissioners of the Revenue, and other assessing officials, regarding the exemption, including interpretation of the provisions of subdivision (a) of Section 6-A of Article X of the Constitution of Virginia and the implementing statutes. Such requests for guidance should ordinarily be in writing by electronic mail to: info@dvs.virginia.gov with a subject line that states, "Request for Tax Guidance."

B. The Commissioner will coordinate with the Office of Attorney General on all inquiries requiring a legal opinion. Further, the Commissioner does not have the authority to answer questions regarding the assessed value of any property. Such questions should be answered solely by the veteran's respective Commissioner of Revenue, or other assessing official.

1VAC80-10-110; Formal Appeals Process.

A. The Commissioner shall hear and decide appeals by veterans and their surviving spouses in the Commonwealth from a denial of their application for the tax exemption. Such appeals shall be limited to questions of fact regarding the eligibility criteria. All requests for an appeal must be in writing.

B. A veteran or surviving spouse desiring to appeal the denial of their application for exemption by a Commissioner of the Revenue, or other assessing official, shall send a written request for appeal and the document from the veteran's respective Commissioner of Revenue or other assessing official, denying the veteran's application as follows:

- a. By electronic mail to: info@dvs.virginia.gov with a subject line that states ATTN: Tax Exemption – APPEAL; or

b. By U.S. mail or delivery to Commissioner, Virginia Department of Veterans Services, ATTN:
Tax Exemption – APPEAL, 101 N. 14th St., 17th Floor, Richmond, VA 23219

C. The Commissioner may conduct hearings telephonically, by video conferencing means, or if he determines it necessary, in person at the Department's headquarters in Richmond or elsewhere. The appeal shall be limited to issues involving the tax exemption eligibility criteria. The Commissioner is not authorized to hear or decide appeals regarding a dispute over a property's assessed value, as these matters are at the sole discretion of local authorities.

D. In advance of any hearing, the veteran or surviving spouse, and the Commissioner of the Revenue, or other assessing official, shall be provided: (i) reasonable notice of the time, date, and location of the hearing; (ii) the right to appear in person or with/by counsel, or other qualified representative, before the Commissioner; (iii) the right to present written and/or oral evidence and/argument in support of the case; and (iv) notice of all information in the possession of the Commissioner that could be relied on in making a decision. The burden of proof by a preponderance of the evidence shall lie with the appealing party.

E. The Commissioner shall render a decision within 90 calendar days from the date of the hearing, or from a later date agreed to by the veteran, or surviving spouse, and the Commissioner. If the Commissioner does not render a decision within 90 calendar days, the veteran may provide written notice to the Commissioner that a decision is due. If no decision is made within 30 calendar days from the Commissioner's receipt of the notice, the decision shall be deemed to be in favor of the veteran.

F. The decision by the Commissioner is binding and final. It will be mailed to all named parties in the appeal.

G. A decision of the Commissioner may be appealed by either party to the circuit court in the locality in which the veteran, or surviving spouse, resides. The burden shall be upon the party challenging of the Commissioner's decision to demonstrate an error of law subject to review by the circuit court.

APPENDIX G

DVS REGULATION

1 VAC AGENCY NO. 80

CHAPTER 20

**SURVIVING SPOUSES OF SERVICE
MEMBERS KILLED IN ACTION**



IVAC AGENCY NO. 80
DEPARTMENT OF VETERANS SERVICES
CHAPTER 20
SURVIVING SPOUSES OF SERVICE MEMBERS KILLED IN ACTION AND IN THE LINE OF DUTY
REAL PROPERTY TAX EXEMPTION

It is promulgated under the authority of Code of Virginia § 58.1-3219.11, which provides:

The Commissioner of the Department of Veterans Services shall promulgate rules and regulations governing the administration and implementation of the property tax exemption under this article. Such rules and regulations shall include, but not be limited to, written guidance for surviving spouses residing in the Commonwealth and for commissioners of the revenue. The Commissioner of the Department of Veterans Services may also provide written guidance to, and respond to requests for information from, surviving spouses residing in the Commonwealth and commissioners of the revenue or other assessing officers regarding the exemption under this article, including interpretation of the provisions of subdivision (b) of Section 6-A of Article X of the Constitution of Virginia and this article.

Questions regarding these regulations should be directed to the Department of Veterans Services at: info@dvs.virginia.gov.

1VAC80-10-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

“Commissioner” means the Commissioner of the Department of Veterans Services.

“Department” means the Virginia Department of Veterans Services.

“Dwelling” means the single structure, including any permanent attachments thereto, that is the principal place of residence of the qualifying veteran or surviving spouse.

“Exemption” means the exemption from real property taxes authorized by subdivision (a) of Section 6-A of Article X of the Constitution of Virginia and § 58.1-3219.9 of the Code of Virginia.

“Killed in Action” (KIA) – When a member of the U.S. Armed Forces is determined by the U.S. Department of Defense to have “died of wounds received in action.”

“Motor Vehicle” means a passenger car or a pickup or panel truck, as those terms are defined in Code of Virginia § 46.2-100, that is registered for personal use.

“Surviving spouse” is the spouse of any member or former member of the armed forces of the United States who has been killed in action or died in the line of duty, as determined by the U.S. Department of Defense.

“Real property” is land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land, and the dwelling ordinarily occupied by the qualified veteran or surviving spouse.

“VA” means the United States Department of Veterans Affairs or any successor agency.

1VAC80-10-20. Real Property Exempt from Taxation – Surviving Spouse of Veteran Killed in Action.

A. The dwelling that is the principal residence of a qualified surviving spouse, plus up to one acre of land, or more than one acre if a given locality has exempted such larger acreage pursuant to § 58.1-3210 of the Code of Virginia shall be exempt from taxation. The exemption extends to real property improvements other than a dwelling, including the land upon which such improvements is situated, so long as the principal use of the improvement is (i) to house or cover motor vehicles or household goods and other personal effects as classified in subdivision A 14 of § 58.1-3503 of the Code of Virginia and as listed in § 58.1-3504 of the Code of Virginia and (ii) for other than a business purpose.

B. If the value of a dwelling is in excess of the average assessed value, in the locality which it is located, as described in this subsection, then only that portion of the assessed value in excess of the average assessed value shall be subject to real property taxes, and the portion of the assessed value that is not in excess of the average assessed value shall be exempt from real property taxes.

C. Manufactured homes, as defined in § 46.2-100 of the Code of Virginia, whether or not the wheels and other equipment previously used for mobility have been removed, shall be exempt after the qualifying surviving spouse has titled the home in the Commonwealth and shown proof of ownership. §§ 58.1-3219.5 and 58.1-3219.9 of the Code of Virginia are the only instances when manufactured homes may be classified as real property. If the surviving spouse does not own the land on which the manufactured home is located, then the land is not exempt. The spouse must meet all other provisions of § 58.1-3219.9 of the Code of Virginia.

D. For surviving spouses of members killed in action, the real estate tax exemption applies for tax years beginning on or after January 1, 2015.

Statutory Authority: § 58.1-3219.9 of the Code of Virginia.

1VAC80-20-30. Full Exemption; Joint Ownership; Trusts.

A. For purposes of this exemption, the full exemption is authorized when real property of any surviving spouse of a member of the armed forces killed in action is held in one of the following trusts: (i) held by a surviving

spouse as a tenant for life; (ii) held in a revocable inter vivos trust over which the surviving spouse holds the power of revocation; or (iii) held in an irrevocable trust under which the surviving spouse possesses a life estate or enjoys a continuing right of use or support.

B. The exemption does not apply to any other forms of trust or any interest held under a leasehold or term of years.

Statutory Authority: § 58.1-3219.9 of the Code of Virginia.

1VAC80-20-40. Partial Exemptions.

If the qualified surviving spouse acquires the property after January 1, 2015, then the exemption shall begin on the date of acquisition, and the previous owner may be entitled to a refund for a pro rata portion of real property taxes paid pursuant to § 58.1-3360 of the Code of Virginia.

Statutory Authority: § 58.1-3219.9 (A) of the Code of Virginia.

1VAC80-20-50. Surviving Spouse Exemption.

The surviving spouse shall qualify for the exemption, so long as:

- a. The death of the qualified service member, as determined by the U.S. Department of Defense, was due to wounds received in action (combat);
- b. The surviving spouse was married to the qualified service member at the time of death; and
- c. The surviving spouse does not remarry.

1VAC80-20-60. Proration When Not All Owners Qualify for the Exemption.

A. In the event that the primary residence is jointly owned by two or more individuals, not all of whom qualify for the exemption pursuant to § 58.1-3219.9 of the Code of Virginia, and no person is entitled to the exemption under this section by virtue of holding the property in any of the three ways set forth in 1VAC80-20-30 (above), then the exemption shall be prorated by multiplying the amount of the exemption or deferral by a fraction that has as a numerator the percentage of ownership interest in the dwelling held by all such joint owners who qualify for the exemption and as a denominator, 100 percent. Example: If two persons (surviving spouse and adult child) jointly own the qualified real property, but only the surviving spouse is entitled to the exemption, then the tax entitlement will be prorated by 50%.

B. In the event that (i) a surviving spouse is entitled to an exemption under this section by virtue of holding the property in any of the three ways set forth in 1VAC80-20-30 (above) and (ii) one or more other persons have an ownership interest in the property that permits them to occupy the property, then the tax exemption for the property that otherwise would have been provided shall be prorated by multiplying the amount of the exemption by a fraction that has 1 as a numerator and has as a denominator the total number of all people having an ownership interest that permits them to occupy the property. Example: If the property is held in trust for the benefit of the surviving spouse and two adult children, then the tax entitlement will be prorated by 33% because the surviving spouse is the only one of the three with a property interest eligible for the tax exclusion.

Statutory Authority: § 58.1-3219.9 (F) of the Code of Virginia.

1VAC80-20-70. Cooperative Associations.

The exemption does not apply to property owned by a cooperative association or any other form of ownership in which the qualified surviving spouse does not actually own the real property other than the trusts detailed in 1VAC80-20-30.

Statutory Authority: § 58.1-3219.9 (E) of the Code of Virginia.

1VAC80-20-80. Qualified Surviving Spouses Residing in Hospitals, Nursing Homes, Convalescent Homes or Other Care Facilities.

If the qualified surviving spouse is residing in a hospital, nursing home, convalescent home, or other facility for physical or mental care for an extended period of time, the exemption will continue on the property so long as such real estate is not used by or leased to others for consideration.

Statutory Authority: § 58.1-3219.12 of the Code of Virginia.

1VAC80-20-90. Application.

A. A surviving spouse claiming the real property tax exemption shall file with the Commissioner of the Revenue, or other assessing official, in her/his respective locality:

A. A Department of Defense Form-1300, *Report of Casualty*, issued by the U.S. Department of Defense, or its successor agency, to confirm date of death and that the service member was killed in action. For purposes of this section, such determination of “killed in action” includes a determination by the Department of Defense of “died of wounds received in action;”

B. An affidavit or application on a form provided by the locality that:

- a. Sets forth the name of the deceased service member and the name of the surviving spouse occupying the real property;
- b. Provides the physical address of the real property for which the exception is sought;
- c. Indicates whether the real property is jointly owned, and if so, the names of the joint owners; and
- d. Certifies that the real property is occupied as the veteran’s principal place of residence. Proof of residency acceptable to the applicable locality, such as a valid Virginia driver’s license, mortgage or utility statements in the surviving spouse’s name.

C. The surviving spouse shall be required to re-file the application, and notify the previous jurisdiction, only if the principal place of residence changes.

D. The surviving spouse must promptly notify the Commissioner of Revenue or other assessing official of any remarriage.

E. No county, city, or town shall be liable for any interest on any refund due to the surviving spouse for taxes paid prior to the filing of the application required by § 58.1-3219.10 of the Code of Virginia.

F. In the determination of the exemption, no locality may implement income or asset limitations or a deadline for application.

G. The limitations and parameters laid out in this policy do not prohibit the locality’s ability to require an annual confirmation of continued residence from the qualifying surviving spouse.

Statutory Authority: § 58.1-3219.10 of the Code of Virginia.

1VAC80-10-100. Informal Requests for Information

A. The Commissioner will provide written guidance to and respond to requests for information from veterans residing in the Commonwealth, Commissioners of the Revenue, and other assessing officials, regarding the exemption, including interpretation of the provisions of subdivision (a) of Section 6-A of Article X of the Constitution of Virginia and the implementing statutes. Such requests for guidance should ordinarily be in writing by electronic mail to: info@DVS.virginia.gov with a subject line that states, “Request for Tax Guidance.”

B. The Commissioner will coordinate with the Office of Attorney General on all inquiries requiring a legal opinion. Further, the Commissioner does not have the authority to answer questions regarding the assessed value of any property. Such questions should be answered solely by the veteran’s respective Commissioner of Revenue, or other assessing official.

APPENDIX H

ATTORNEY GENERAL

OPINION 11-017



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

March 2, 2011

900 East Main Street
Richmond, Virginia 23219
804-786-2071
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Virginia Relay Services
800-828-1120
7-1-1

The Honorable Ross A. Mugler
Commissioner of the Revenue
City of Hampton
Post Office Box 636
Hampton, Virginia 23669

Dear Commissioner Mugler:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You inquire whether two bills exempting property for disabled veterans “for tax years beginning on or after January 1, 2011,” each containing an emergency enactment clause, would apply to the tax bill due in your locality on June 5, 2011, and which tax bill is assessed for the second half of the tax year that began on July 1, 2010.

Response

It is my opinion that, were it to become law, the exemption at issue would not apply to payments due for the tax year that began on July 1, 2010, including payments due for the second half of the tax year.

Background

House Bill 1645 and Senate Bill 987 would amend the Code of Virginia to exempt from taxation the real property of a veteran who has “a 100 percent service-connected, permanent, and total disability, and who occupies the real property as his principal place of residence.” The bills provide that the exemption would apply “for tax years beginning on or after January 1, 2011.” The proposed legislation contains an emergency enactment clause, meaning that the proposal would become law from the time of its passage.

Applicable Law and Discussion

Although the proposed legislation would go into effect immediately upon approval by the General Assembly and the Governor due to its emergency enactment clause, by its plain language the law would apply only to “tax years beginning on or after January 1, 2011.” The proposed legislation would not apply to a tax year that began before January 1, 2011. You relate that the tax year for the City of Hampton begins on July 1. Therefore, the current tax year began on July 1, 2010, and the proposals by their plain terms would not apply until the following tax year, *i.e.* a tax year that began “on or after

Honorable Ross A. Mugler
March 2, 2011
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January 1, 2011.” The fact that there are two payments made during the course of the tax year does not alter the fact that the tax year began before January 1, 2011. Therefore, I conclude that the second half of the bill for real property of disabled veterans that will come due on June 5, 2011 would not be subject to the exemption until the following tax year.

Conclusion

Accordingly, it is my opinion that, were it to become law, the exemption at issue would not apply to payments due for the tax year that began on July 1, 2010, including payments due for the second half of the tax year.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink that reads "Ken C II". The signature is stylized, with "Ken" written in a cursive-like font and "C II" in a more blocky, capital letter style.

Kenneth T. Cuccinelli, II
Attorney General

APPENDIX I

ATTORNEY GENERAL
OPINION 11-061



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

July 15, 2011

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The Honorable John M. O'Bannon, III, M.D.
Member, House of Delegates
Post Office Box 70365
Richmond, Virginia 23255

The Honorable Linda T. Puller
Member, Senate of Virginia
Post Office Box 73
Mount Vernon, Virginia 22121

The Honorable L. Scott Lingamfelter
Member, House of Delegates
5420 Lomax Way
Woodbridge, Virginia 22193

The Honorable Stephen D. Newman
Member, Senate of Virginia
Post Office Box 480
Forest, Virginia 24551

Dear Delegate O'Bannon, Senators Puller and Newman, and Delegate Lingamfelter:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You ask several questions in connection with Article X, § 6-A of the Virginia Constitution and the legislation implementing that provision.

1. You ask what are the effective dates of Article X, § 6-A, as approved by the voters on November 2, 2010, and §§ 58.1-3219.5 and 58.1-3219.6, and whether the legal effect of these provisions may be applied retroactively;
2. You ask whether a surviving spouse who was married to an eligible veteran qualifies for the tax exemption when the veteran died before the effective date of the tax exemption;
3. You ask whether the provisions of §§ 58.1-3219.5 and 58.1-3219.6 apply to otherwise qualifying veterans who die before the effective date of these provisions, and their spouses who have not remarried and continue to occupy the real property as their principal place of residence;
4. You ask whether the provisions of Article X, § 6-A, approved by the voters on November 2, 2010, and §§ 58.1-3219.5 and 58.1-3219.6 apply to veterans rated by the U.S. Department of Veterans Affairs ("VA") with a total disability rating on the basis of individual unemployability due to service-connected disability;
5. You inquire regarding the identity of the correct official in the Commonwealth who has responsibility for interpreting and implementing §§ 58.1-3219.5 and 58.1-3219.6;

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6. You ask whether the General Assembly may enact legislation authorizing the Commissioner of the Virginia Department of Veterans Services ("VDVS") to promulgate rules and regulations governing the administration and/or implementation of this tax exemption;
7. You ask whether the General Assembly has the authority to enact the provision in § 58.1-3219.5 that restricts the tax exemption to land not exceeding one acre in size;
8. You ask for a definition of the term "real property" and whether such term includes just the dwelling on the land occupied by the veteran or includes both the dwelling and the land;
9. You ask whether the tax exemption is a "program" within the meaning of § 2.2-2001(A) and (C);
10. You ask whether a legal means exists to extend the tax exemption to the surviving spouse of a veteran who was rated to have a 100 percent service-connected, permanent, and total disability but died before the exemption's effective date;
11. You ask whether the tax exemption applies to real property that the veteran occupies as his or her principal residence but that the veteran has chosen to place title in i) a revocable inter vivos trust with the spouse; ii) a revocable inter vivos trust with other(s) than the spouse; or iii) an irrevocable trust; and
12. You ask whether the tax exemption applies exclusively to the real property owned at the time of death by the veteran who qualified for the tax exemption or whether it follows the spouse if he or she decides to relocate.

Response

It is my opinion that:

1. The effective date of Article X, § 6-A as approved by the voters on November 2, 2010, is January 1, 2011. The effective date of §§ 58.1-3219.5 and 58.1-3219.6 is April 6, 2011, and the legal effect of the statutory provisions must be applied retroactively to January 1, 2011;
2. The surviving spouse of a veteran who dies before the January 1, 2011 effective date of the tax exemption does not qualify for this exemption;
3. The provisions of §§ 58.1-3219.5 and 58.1-3219.6 do not apply to either veterans who die before the effective date of these provisions or their spouses who have not remarried and continue to occupy the real property as their principal place of residence;
4. The tax exemption applies to veterans rated by the VA with a total disability rating on the basis of individual unemployability due to a service-connected disability which rating revolves around the inability to engage in substantially gainful employment;
5. The commissioner of the revenue has the responsibility for interpreting and implementing §§ 58.1-3219.5 and 58.1-3219.6;

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6. The General Assembly may enact legislation authorizing the Commissioner of VDVS to promulgate rules and regulations governing the administration and/or implementation of this tax exemption;
7. The General Assembly has the authority to limit the tax break to land that does not exceed one acre;
8. Within the context of Article X, § 6-A and §§ 58.1-3219.5 and 58.1-3219.6, the definition of "real property" includes both the dwelling and the land;
9. The tax exemption is not a "program" within the meaning of § 2.2-2001(A) and (C);
10. There is no legal authority to provide the real property tax exemption to the surviving spouse of a veteran who was rated to have a 100 percent service-connected, permanent, and total disability but died before January 1, 2011;
11. The tax relief under Article X, § 6-A, as implemented by §§ 58.1-3219.5 and 58.1-3219.6, is not available when the veteran has chosen to place title to the real estate in i) a revocable inter vivos trust with the spouse; ii) a revocable inter vivos trust with other(s) apart from the spouse; or iii) an irrevocable trust; and
12. The exemption is exclusive to the property for which the veteran qualified and occupied as his or her principal place of residence at the time of death, and does not follow the spouse if he or she relocates.

Background

At the general election held on November 2, 2010, the voters of the Commonwealth were presented the following referendum question related to amending the Constitution of Virginia:

Shall the Constitution be amended to require the General Assembly to provide a real property tax exemption for the principal residence of a veteran, or his or her surviving spouse, if the veteran has a 100 percent service-connected, permanent, and total disability?^[1]

With 82.4 percent of the voters answering the question in the affirmative,² Article X is now amended to include a new § 6-A, which provides that:

Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, shall exempt from taxation the real property, including the joint real property of husband and wife, of any veteran who has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a one hundred percent service-connected,

¹ See 2010 Va. Acts chs. 358, 588.

² See VIRGINIA STATE BOARD OF ELECTIONS, NOVEMBER 2, 2010 GENERAL AND SPECIAL ELECTIONS OFFICIAL RESULTS, available at https://www.voterinfo.sbe.virginia.gov/election/DATA/2010/EB24720D-F5C6-4880-8DC5-12AE4D0C3772/official/9_s.shtml.

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permanent, and total disability, and who occupies the real property as his or her principal place of residence. The General Assembly shall also provide this exemption from taxation for real property owned by the surviving spouse of a veteran who was eligible for the exemption provided in this section, so long as the surviving spouse does not remarry and continues the real property as his or her principal place of residence.^[3]

As a result of the passage of this referendum question, the 2011 Session of the General Assembly enacted legislation to implement this real property tax exemption, adding in Chapter 32 of Title 58.1, a new Article 2.3, consisting of §§ 58.1-3219.5 and 58.1-3219.6.⁴

As detailed in the United States Department of Veterans Affairs ("VA") booklet "Federal Benefits for Veterans, Dependents and Survivors,"⁵ the VA pays monthly compensation benefits for disabilities incurred or aggravated during active military service. When the VA grants a veteran's claim, it awards a service-connected disability rating that determines the dollar amount of monthly compensation payments. When rating a service-connected disability, a VA adjudicator reviews the medical evidence, finds the appropriate diagnostic code, compares the clinical evidence of the severity of the veteran's current symptoms with the list of symptoms for that diagnostic code, and assigns the rating percentage that corresponds to the selected severity of symptoms. The VA pays the same dollar amount for each percentage level regardless of the nature of the veteran's disability. For example, the monthly payment for a ten percent rating will be the same for a psychiatric disorder, diabetes, heart condition, etc. The same applies to 20 to 100 percent ratings.

The VA uses a schedule of rating disabilities when it determines the level of a veteran's service-connected disability. The rating schedule is essentially a listing of diseases and disorders, categorized by body systems, that includes symptoms for each disease or disorder in an increasing order of severity. Percentages of disability are assigned to each level of symptoms from zero (non-compensable disabling) to one-hundred percent (totally disabling) in ten percent increments. The criteria for many VA 100 percent disability ratings includes a requirement that the veteran not be able to get or keep a job because of that disability.

In instances where the service-connected disability rating is not 100 percent, VA benefits nonetheless may be available to compensate the veteran at the 100 percent level if the veteran is unable to work because of his or her service-connected disability/disabilities. This benefit is called a total ("100 percent") rating on the basis of individual unemployability due to service-connected disability and is also referred to as total disability based upon individual unemployability ("TDIU" or "IU"). It revolves around to the inability to engage in "substantially gainful employment," which means the ability to earn at least an amount equal to the annual poverty level set by the federal government.

TDIU or IU is a part of the VA's disability compensation program that allows the VA to pay certain veterans compensation at the 100 percent rate, even though the VA has not rated their service-

³ See 2010 Va. Acts chs. 358, 588.

⁴ See 2011 Va. Acts chs. 769, 840.

⁵ See U.S. DEP'T OF VETERANS AFFAIRS, FEDERAL BENEFITS FOR VETERANS, DEPENDANTS AND SURVIVORS (2011), available at www.va.gov/opa/publications/benefits_book.asp. The details of the administration of VA disability benefits can be found in the *Code of Federal Regulations*. See 38 C.F.R. Part 4.

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connected disabilities at the 100 percent level. To qualify, a veteran must be "unable to secure or follow substantially gainful employment as a result of service-connected disabilities."⁶ A veteran also must have either 1) one service-connected disability ratable at sixty percent or more, or 2) two or more service-connected disabilities, at least one disability ratable at forty percent or more with a combined rating of seventy percent or more.⁷

Notwithstanding these criteria, a veteran, upon special consideration of extra-schedular factors, still may qualify as totally disabled when the veteran is considered unemployable due to a service-connected disability(ies), but fails to meet the minimum percentage standards.⁸

Applicable Law and Discussion

I. Effective Date and Retroactivity

You first inquire regarding the effective date of Article X, § 6-A as approved by the voters on November 2, 2010, and of chapters 769 and 840 of the 2011 Acts of Assembly that added §§ 58.1-3219.5 and 58.1-3219.6. You ask when each of these provisions became the law of the Commonwealth and whether the legal effect of these provisions applies retroactively.

Article XII, § 1 specifies the procedure for amending the Constitution of Virginia. When a proposed amendment to the Constitution is approved by a majority of those voting at the election designated by the General Assembly for approval of a proposed amendment,⁹ that amendment to the Constitution becomes effective on the date prescribed by the General Assembly.

In its 2010 session, the General Assembly, through the passage of House Bill 149 and Senate Bill 31, directed that the proposed amendment adding § 6-A to Article X be submitted to the voters at the November 2, 2010, election.¹⁰ The General Assembly further directed that "[i]f a majority of those voting vote in favor of the amendment, it shall become effective on January 1, 2011."¹¹ Because a majority of those voting on November 2, 2010 voted in favor of adding § 6-A to Article X of the Constitution, the provisions relating to a property tax exemption for certain veterans was a part of the Constitution on January 1, 2011.

Section 6-A required the General Assembly to exempt from taxation, by general law, "the real property, including the joint real property of husband and wife, of any veteran who has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a one hundred percent service-connected, permanent, and total disability, and who occupies the real

⁶ 38 C.F.R. 4.16(a) (2010).

⁷ *Id.*

⁸ *Id.* at § 4.16(b).

⁹ VA. CONST. art. XII, § 1. Note that strict compliance with the prerequisites of Article XII, § 1 is required in order to amend effectively the Constitution. *See Coleman v. Pross*, 219 Va. 143, 246 S.E.2d 613 (1978) (holding that where proposed amendments approved at 1978 Session of the General Assembly were not the same as the proposed amendments approved at 1977 session, there was not strict compliance with Article XII, § 1).

¹⁰ *See* 2010 Va. Acts chs. 358, 588.

¹¹ *Id.*

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property as his or her principal place of residence.” The addition of § 6-A to Article X was not self-executing because the amendment required further legislation from the General Assembly to make its provisions operative.¹² Adding § 6-A to Article X required the General Assembly to enact a general law exempting such veterans from real property taxation.

The general law enacted by the 2011 Session of the General Assembly to implement the provisions of § 6-A to Article X providing for the property tax exemption for certain veterans is contained in Chapters 769 and 840 of the 2011 Acts of Assembly.¹³ Chapters 769 and 840 were signed into law by the Governor on April 6, 2011, and became effective immediately because both contained an emergency enactment clause.¹⁴

The Supreme Court of Virginia recognizes that “[r]etrospective laws are not favored, and a statute is always to be construed as operating prospectively, unless a contrary intent is manifest.”¹⁵ The intent of the General Assembly is set forth in § 58.1-3219.5(A), which expressly provides that the exemption applies to tax years beginning on or after January 1, 2011. Furthermore, §§ 58.1-3219.5(B) and 58.1-3219.6 specify that a surviving spouse of such a veteran qualifies for this real property tax exemption “so long as the death of the veteran occurs on or after January 1, 2011,” and the surviving spouse provides documentation that the veteran’s death occurred on or after January 1, 2011.

I, therefore, conclude that January 1, 2011, is the effective date of Article X, § 6-A of the Constitution of Virginia as approved by the voters on November 2, 2010. Chapters 769 and 840 of the 2011 Acts of Assembly (enacting §§ 58.1-3219.5 and 58.1-3219.6) became the law of the Commonwealth on April 6, 2011. The provisions of §§ 58.1-3219.5 and 58.1-3219.6 clearly and plainly apply to tax years beginning on or after January 1, 2011, and require that the veteran’s death occur on or after January 1, 2011, for a spouse to claim the exemption.¹⁶ Finally, the legal effect of these provisions applies retroactively to January 1, 2011.

¹² See *Gray v. Virginia Sec’y of Transp.*, 276 Va. 93, 103, 662 S.E.2d 66, 71 (2008) (“If a constitutional provision is self-executing, no further legislation is required to make it operative”). See also *Robb v. Shockoe Slip Found.*, 228 Va. 678, 681-82, 324 S.E.2d 674, 676 (1985) (explaining how to determine whether a constitutional provision is self-executing).

¹³ 2011 Va. Acts chs. 769, 840 (adding §§ 58.1-3219.5 and 58.1-3219.6 to Chapter 32 of Title 58.1, relating to real property tax).

¹⁴ “All laws enacted at a regular session . . . shall take effect on the first day of July following the adjournment of the session of the General Assembly at which it has been enacted . . . unless in the case of an emergency (which emergency shall be expressed in the body of the bill) the General Assembly shall specify an earlier date.” VA. CONST. art. IV, § 13.

¹⁵ *Adams v. Alliant Techsystems, Inc.*, 261 Va. 594, 599, 544 S.E.2d 354, 356 (2001) (quoting *Duffy v. Hartsock*, 187 Va. 406, 419, 46 S.E.2d 570, 576 (1948)) (other citation omitted).

¹⁶ “When the language in a statute is clear and unambiguous, [courts] apply the statute according to its plain language.” *Va. Polytechnic Inst. & State Univ. v. Interactive Return Serv.*, 271 Va. 304, 309, 262 S.E.2d 436, 438 (2008) (citing *HCA Health Servs. v. Levin*, 260 Va. 215, 220, 530 S.E. 2d 417, 419-20 (2000)).

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II. Legal Effect on Surviving Spouse when Veteran Dies Prior to Effective Date

Your next question asks whether the surviving spouse of a veteran, who otherwise qualifies for the real property tax exemption, would qualify for the exemption when the eligible veteran died before the effective date of the exemption and the surviving spouse has not remarried and continues to occupy the real property as his or her principal place of residence.

Section 58.1-3219.5(B) expressly provides that “[t]he surviving spouse of a veteran eligible for the exemption . . . shall also qualify for the exemption, *so long as the death of the veteran occurs on or after January 1, 2011*” (emphasis added). Because statutes are to be interpreted according to their plain language,¹⁷ I conclude that the exemption extends only to those spouses surviving a qualifying veteran who died on or after January 1, 2011, the effective date of the provision. Therefore, the surviving spouse of an otherwise qualifying veteran who dies before January 1, 2011 does not qualify for such an exemption, even when the surviving spouse has not remarried and continues to occupy the real property as his or her principal place of residence.

III. Whether §§ 58.1-3219.5 and 58.1-3219.6 Apply Retroactively

You next ask whether the provisions of §§ 58.1-3219.5 and 58.1-3219.6 apply to all qualifying veterans who die before the effective date of these provisions and their spouses who have not remarried and continue to occupy the real property as their principal place of residence.

Sections 58.1-3219.5 and 58.1-3219.6 went into effect on April 6, 2011. As I have previously stated, “[r]etrospective laws are not favored, and a statute is always to be construed as operating prospectively, unless a contrary intent is manifest.”¹⁸ Sections 58.1-3219.5(A), (C), and 58.1-3219.6 expressly provide for retroactive application of these statutory provisions to January 1, 2011, so I must conclude that these provisions do not apply to veterans who died before January 1, 2011, or to their spouses. It is, therefore, necessary for a veteran to qualify for the exemption in the first instance in order for his or her spouse *also* to qualify for the exemption. For the veteran to qualify for the exemption in the first instance, he or she must be rated by the VA pursuant to federal law to have a 100 percent service-connected, permanent, and total disability, *and* occupy the real property as his or her principal place of residence. Obviously, a veteran cannot occupy real property as his or her principal place of residence if he or she dies before the effective date of the real property tax exemption.

IV. Meaning of “100 Percent Service-connected, Permanent, and Total Disability”

You next ask whether Article X, § 6-A and §§ 58.1-3219.5 and 58.1-3219.6 apply to veterans rated by the VA with a total (“100 percent”) disability rating on the basis of individual unemployability due to service-connected disability (“TDIU” or “IU”). This rating relates to the inability to engage in “substantially gainful employment,” meaning a job that pays at least an amount equal to the annual poverty level set by the federal government.

¹⁷ See, e.g., *Signal Corp. v. Keane Fed. Sys., Inc.*, 265 Va. 38, 46-47; 574 S.E.2d 253, 257 (2003) (also noting that “[c]ourts are not free to add language, nor to ignore language, contained in statutes.”)

¹⁸ *Duffy*, 187 Va. at 419, 46 S.E.2d at 576 (citing *Whitlock v. Hawkins*, 105 Va. 242, 249, 53 S.E. 401, 403 (1906)).

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The exemption is dependent on a rating by the VA, or its successor agency, indicating that, under federal law, a veteran has a 100 percent service-connected, permanent, and total disability. The constitutional amendment requires the General Assembly to grant the exemption from taxation on the real property "of any veteran who has been rated by the U.S. Department of Veterans Affairs or its successor agency pursuant to federal law to have a 100 percent service-connected, permanent, and total disability." Section 58.1-3219.5 contains the same language. The tax exemption is tethered to the VA's rating system.

The VA Schedule for Rating Disabilities¹⁹ comprises ten grades of disability that are based on the average impairment of a veteran's occupational earning capacity.²⁰ Under the rating schedule, the highest grade of disability is 100 percent, which means that a veteran is totally disabled. Under the provisions of 38 C.F.R. § 4.16, however, a total disability rating may also be assigned by the VA where a person who fails to meet the schedular rating percentage is, nevertheless, unable to secure a substantially gainful occupation.²¹ TDIU ratings consider the effect that service-connected disabilities have on a particular veteran's ability to work. Therefore, a total rating based on TDIU is more individualized than a schedular rating, which is based on the average impairment of earnings. In the case of *Norris v. West*,²² the U.S. Court of Appeals for Veterans Claims found that a "claim for TDIU is based on an acknowledgement that even though a rating less than 100% under the rating schedule may be correct, objectively, there are subjective factors that may permit *assigning a 100% rating* to a particular veteran under particular facts."²³ Therefore, a determination of the veteran's entitlement to TDIU is considered in the context of the individual veteran's capabilities regardless of whether an average person would be rendered unemployable under the same circumstances.

Given the VA policy providing that "all veterans who are unable to secure and follow a substantially gainful occupation by reason of service-connected disabilities shall be rated totally disabled[,]"²⁴ receiving a TDIU rating is simply "*an alternative way to obtain a total disability rating without being rated 100% disabled under the Rating Schedule.*"²⁵ Furthermore, the VA regulations provide that "[a]ll veterans who are basically eligible and who are unable to secure and follow a substantially gainful occupation by reasons of disabilities which are likely to be permanent shall be rated as permanently and totally disabled."²⁶ Accordingly, I conclude that the tax exemption extends to veterans rated by the VA with a total ("100 percent") disability rating on the basis of individual unemployability due to service-connected disability ("TDIU" or "IU").

It could be argued that the provisions of 38 C.F.R. § 4.16 apply only to total disability determinations based on the rating schedule. Article X, § 6-A to the Constitution and §§ 58.1-3219.5 and 58.1-3219.6, however, do not indicate for what reasons the 100 percent disability rating must be incurred

¹⁹ See 38 C.F.R. pt. 4 (2010).

²⁰ See 38 C.F.R. §§ 4.15, 4.25 (2010).

²¹ See 38 C.F.R. § 4.16(a) (2010).

²² 12 Vet. App. 413 (1999).

²³ *Id.* at 421 (quoting *Parker v. Brown*, 7 Vet. App. 116, 118 (1994)) (emphasis added).

²⁴ 38 C.F.R. § 4.16(b).

²⁵ 12 Vet. App. at 420-21 (emphasis added).

²⁶ See 38 C.F.R. § 4.17 (2010).

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other than that it must be service connected. Therefore, if a veteran receives a 100 percent service-connected, permanent, and total disability rating from the VA for any reason, the tax exemption will apply.²⁷

V. Responsibility for Interpretation and Implementation

You next ask which official in the Commonwealth is responsible for interpreting and implementing the provisions of §§ 58.1-3219.5 and 58.1-3219.6 that execute the provisions of Article X, § 6-A.

The duties of commissioners of the revenue are set out specifically in Article 1, Chapter 31 of Title 58.1, §§ 58.1-3100 through 58.1-3122.2. Section 58.1-3107 provides that the local commissioner of the revenue "shall obtain . . . tax returns from every taxpayer within his jurisdiction who is liable . . . to file such return with him for all taxes assessed by his office." It is generally the duty of the commissioner of the revenue to assess property taxes.²⁸

I am, therefore, of the opinion that the commissioner of the revenue, or local official performing the duties of a commissioner of the revenue, is the correct official in the Commonwealth with responsibility for interpreting and implementing the provisions of §§ 58.1-3219.5 and 58.1-3219.6 that execute the provisions of Article X, § 6-A.

VI. Ability of General Assembly to Pass Legislation Regarding Administration of Tax Exemption

You next ask whether the General Assembly may enact legislation that authorizes the Commissioner of VDVS to promulgate rules and regulations governing the administration and/or implementation of this tax exemption to include, but not be limited to, providing written guidance to the veterans residing in the Commonwealth, responding to requests for information regarding eligibility from veterans residing in the Commonwealth, and interpreting for the Commonwealth's veterans the provisions of Article X, § 6-A of the Constitution and §§ 58.1-3219.5 and 58.1-3219.6.

The Constitution does not grant power to the General Assembly; it only restricts power "otherwise practically unlimited."²⁹ Accordingly, "the General Assembly may enact any law not prohibited by the Constitution."³⁰ Because no constitutional provision precludes such legislation, I conclude that the General Assembly authorize the Commissioner of VDVS to promulgate rules and regulations governing the administration and/or implementation of this tax exemption to include, but not be limited to, providing written guidance to the veterans residing in the Commonwealth, responding to requests for information regarding eligibility from veterans residing in the Commonwealth, and

²⁷ I note that other states' Attorneys General have come to the same conclusion with respect to similar statutes. See 1976 Op. Md. Att'y Gen. 836; 2009 Op. Ark. Att'y Gen. No. 2009-054.

²⁸ A prior Opinion of this Office concludes that it is the duty of the commissioner of the revenue to assess property taxes. 1982-83 Op. Va. Att'y Gen. 518.

²⁹ *Lewis Trucking Corp. v. Commonwealth*, 207 Va. 23, 29, 147 S.E.2d 747, 751 (1966); see also *Terry v. Mazur*, 234 Va. 442, 449, 362 S.E.2d 904, 908 (1987).

³⁰ *Id.* (citations omitted).

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interpreting the provisions of Article X, § 6-A of the Constitution and §§ 58.1-3219.5 and 58.1-3219.6 for the veterans of the Commonwealth.³¹

VII. The General Assembly's Authority to Restrict Tax Exemption to Land Not Exceeding One Acre in Size

You note that § 58.1-3219.5(C) provides, in part, that “[a] county, city, or town shall provide for the exemption from real property taxes the qualifying dwelling pursuant to this section, and shall provide for the exemption from real property taxes the land, not exceeding one acre, upon which it is situated.” You inquire regarding the authority of the General Assembly to impose the one-acre restriction.

The General Assembly of Virginia has plenary powers and may enact any law not prohibited by the United States Constitution or the Virginia Constitution.³²

Article X, § 6-A requires the General Assembly to enact a general law exempting the real property used by a qualifying veteran and spouse “as his or her principal place of residence.” The General Assembly did so by enacting § 58.1-3219.5(C) that requires a county, city or town to provide the real estate tax exemption for “the land, not exceeding one acre, upon which [the qualifying dwelling] is situated.” The General Assembly further provided that, if a county, city, or town “provides for an exemption from or deferral of real property taxes of more than one acre of land [with regard to exemptions for the elderly or handicapped as authorized by Article 2 of Chapter 32], then the county, city, or town shall also provide an exemption for the same number of acres” pursuant to § 58.1-3219.5.³³ The General Assembly is clearly empowered to enact § 58.1-3219.5(C), and no provision of the Constitution prohibits enactment of an acreage limitation. In fact, Article X, § 6-A expressly grants to the General Assembly the authority to prescribe in general law the “restrictions and conditions” for the disabled veteran real property tax exemption. As noted above, Article X, § 6-A was not self-executing; the amendment required further action by the General Assembly to implement the exemption and to establish the restrictions and conditions for the same by general law.³⁴ Accordingly, it is my opinion that the General Assembly is authorized to limit the tax exemption for the land to one acre.

VIII. Meaning of “Real Property”

Within the context of Article X, § 6-A and §§ 58.1-3219.5 and 58.1-3219.6, you ask for a definition of the term “real property” and whether such term includes just the dwelling on the land occupied by the veteran, or includes both the dwelling and the land.

³¹ I note, however, that the General Assembly may not authorize the VDVS to expand the scope of the exemption beyond the limits established by the constitutional amendment.

³² *City of Portsmouth v. City of Chesapeake*, 205 Va. 259, 264, 136 S.E.2d 817, 822 (1964); *Ry. Express Agency, Inc. v. Commonwealth*, 199 Va. 589, 593, 100 S.E.2d 785, 788 (1957), *aff'd*, 358 U.S. 434 (1959); *Sprvrs. of Cumberland Cnty. v. Randolph*, 89 Va. 614, 619, 16 S.E. 722, 723 (1893).

³³ As stated in the case of *Pettus v. Hendricks*, 113 Va. 326, 330, 74 S.E. 191, 193 (1912), while the word “shall” is primarily mandatory in effect, and “may” is primarily permissive in effect, “courts, in endeavoring to arrive at the meaning of written language, whether used in a will, a contract, or a statute, will construe “may” and “shall” as permissive or mandatory in accordance with the subject matter and context.”

³⁴ See *supra* note 12 and accompanying text.

Honorable John M. O'Bannon, III, M.D.
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The General Assembly did not define the term “real property” in §§ 58.1-3219.5 and 58.1-3219.6. Therefore, unless a contrary legislative intent is manifest, words used in a statute must be given their common, ordinary, and accepted meanings in use at the time of the statute.³⁵ The term “real property” is generally defined to mean: “Land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land. Real property can be either corporeal (soil and buildings) or incorporeal (easements).”³⁶ It includes land and things permanently attached to the land, such as trees, buildings, and stationary mobile homes.³⁷

Therefore, I am of the opinion that the term “real property” in Article X, § 6-A and §§ 58.1-3219.5 and 58.1-3219.6 includes both the land and dwelling occupied by the veteran.

IX. Whether Tax Exemption is a “Program”

You next ask whether the tax exemption created by Article X, § 6-A, implemented by §§ 58.1-3219.5 and 58.1-3219.6, is a “program” within the meaning of § 2.2-2001(A) and (C).

Chapter 20 of Title 2.2, §§ 2.2-2000 through 2.2-2004.1, details the statutory authority of the VDVS. Section 2.2-2001 contains all of the administrative authority of VDVS to act. Specifically, § 2.2-2001(A) provides that

The Department shall be responsible for the establishment, operation, administration, and maintenance of offices and programs related to services for Virginia-domiciled veterans of the armed forces of the United States and their eligible spouses, orphans, and dependents. Such services shall include, but not be limited to, benefits claims processing and all medical care centers and cemeteries for veterans owned and operated by the Commonwealth.

Additionally, § 2.2-2001(C) provides:

The Department shall establish guidelines for the determination of eligibility for Virginia-domiciled veterans and their spouses, orphans, and dependents for participation in programs and benefits administered by the Department.

³⁵See *Commonwealth v. Orange-Madison Coop. Farm Serv.*, 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980) (“In the absence of a statutory definition . . . , a statutory term is given its ordinary meaning, given the context in which it is used”); *Op. Va. Att’y Gen.*: 1995 at 289, 290; 1991 at 296, 298; 1990 at 233, 234.

³⁶BLACK’S LAW DICTIONARY 1337 (9th ed. 2009).

³⁷I, however, wish to note that prior opinions of the Attorney General conclude that manufactured homes should be classified and taxed as real or personal property, depending on how the common law doctrine of fixtures applies to the facts and circumstances of each case. *See Op. Va. Att’y Gen.*: 2001 at 197, 198; 1987-88 at 576, 577; 1985-86 at 300, 301; 1981-82 at 368, 369; 1977-78 at 427, 428. The three tests applied by the Supreme Court of Virginia in determining whether an item of personal property placed upon realty becomes a fixture are: “(1) annexation of the property to the realty, (2) adaptation to the use or purpose to which that part of the realty with which the property is connected is appropriated, and (3) the intention of the parties.” *Transcon. Gas Pipe Line Corp. v. Prince William Cnty.*, 210 Va. 550, 555, 172 S.E.2d 757, 761-62 (1970).

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The General Assembly does not define the term “programs” as it is used in § 2.2-2001(A). Therefore, the word must be accorded its ordinary meaning.³⁸ The word “program” is generally defined as “a plan of procedure: a schedule or system under which action may be taken toward a desired goal.”³⁹

Neither the voter approval of Article X, § 6-A on November 2, 2010, nor the enactment of the legislation providing for the real property tax exemption constitutes a “program” as that word is used in § 2.2-2001(A). In addition, the amendment and subsequent legislation are clearly not programs or benefits under § 2.2-2001(C).

After the ballot question passed, the General Assembly enacted §§ 58.1-3219.5 and 58.1-3219.6, which do not direct or authorize the VDVS to interpret the provisions. Rather, § 58.1-3219.5(C) requires a county, city or town to provide for the exemption. Furthermore, § 58.1-3219.6 requires that one claiming the exemption file with the commissioner of the revenue of the county, city or town, forms supplied by the locality containing certain required information and documentation from the U.S. Department of Veterans Affairs reflecting that the veteran has a 100 percent service-connected, permanent, and total disability.

I am, therefore, of the opinion that the tax exemption created by Article X, § 6-A, implemented by §§ 58.1-3219.5 and 58.1-3219.6, is not a “program” within the meaning of § 2.2-2001(A) and (C).

X. Whether a Legal Means Exists to Extend Tax Exemption to Surviving Spouse of Veteran who Died Prior to January 1, 2011

Another question you ask is whether a legal means exists by which to extend this tax exemption to the surviving spouse of a veteran who was rated to have a 100 percent service-connected, permanent, and total disability but died before the January 1, 2011, effective date of Article X, § 6-A and §§ 58.1-3219.5 and 58.1-3219.6.

The Constitution of Virginia requires the taxation of all property, except as specifically excluded therein.⁴⁰ Therefore, although the General Assembly generally “possesses all legislative power not prohibited to it,”⁴¹ the legislature may not adopt a measure providing for tax exemptions unless expressly authorized to do so by the Constitution. In the absence of the amendment adding Article X, § 6-A, therefore, the General Assembly would have been precluded from providing the real estate tax exemption contained in § 58.1-3219.5. As such, Article X, § 6-A provides an exception to the requirement that all property be taxed.

This exception, however, is confined to the express provisions of the amendment. Article X, § 6-A confers authority upon the General Assembly to extend the real estate tax provision to surviving spouses of eligible veterans. To be eligible, the veteran must “occup[y] the real property as his or her principal place of residence.” Veterans who predecease the effective date of the statute are ineligible for

³⁸ See *McKeon v. Commonwealth*, 211 Va. 24, 27, 175 S.E.2d 282, 284 (1970).

³⁹ See *Winborne v. Virginia Lottery*, 278 Va. 142, 148, 677 S.E.2d 304, 306 (2009) (quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 1812 (1993)).

⁴⁰ VA. CONST. art. X, § 1.

⁴¹ *Sprvrs. of Cumberland Cnty. v. Randolph*, 89 Va. 614, 619, 16 S.E. 722, 723 (1893).

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the tax relief because they cannot "occupy" the property, so in turn, their surviving spouses also are ineligible.

Article X, § 6-A does not permit the legislature to enact any additional legislation to further exempt surviving spouses of veterans who passed away prior to the effective date. Therefore, it is my opinion that there is no way, short of another constitutional amendment, to provide to the surviving spouse of such deceased veterans the real property tax exemption.

XI. Whether Tax Exemption Applies to Real Property Titled in a Trust

Another question relating to the tax exemption is whether these provisions apply to real property that is i) titled in a revocable inter vivos trust with the spouse; ii) titled in a revocable inter vivos trust with other(s) than the spouse; or iii) titled in an irrevocable trust.

Under Virginia law, a person (the settlor) may create a trust by transferring property to another person as trustee.⁴² When real property is involved, the transfer typically takes the form of a recorded deed of conveyance to the trustee. In the context of local property taxes, the Code provides that "[i]f the property is held in trust for the benefit of another, it shall be listed by and taxed to the trustee, if there is any in this Commonwealth, and if there is no trustee in this Commonwealth, it shall be listed by and taxed to the beneficiary."⁴³

Prior opinions of the Attorney General have strictly construed eligibility for the property tax exemption allowed under Article X, § 6(b) and § 58.1-3210 for certain persons who are at least sixty-five years of age or permanently and totally disabled when ownership of the property is not directly or solely held by the person who otherwise might qualify for the tax benefit.⁴⁴ It is worth noting that the tax exemption of Article X, § 6-A uses broader language than that found in Article X, § 6(b). The former applies the exemption to "the real property, including the joint real property of husband and wife, of any veteran" whereas the latter applies its exemption to "real estate and personal property . . . owned by, and occupied as the sole dwelling of, persons not less than sixty-five years of age." [Emphasis added.] This distinction in language, however, at most leaves some ambiguity as to the question whether a property held in trust might qualify for the Article X, § 6-A exemption.

As the Supreme Court of Virginia has articulated, however:

The Constitution of Virginia, as revised in 1971, provides that "[e]xemptions of property from taxation . . . shall be strictly construed." This rule of strict construction stems from the Commonwealth's announced policy "to distribute the tax burden uniformly and upon all property." Therefore, statutes granting tax exemptions are construed strictly against the taxpayer, and "[w]hen a tax statute is susceptible of two constructions, one granting an exemption and the other not granting it, courts adopt the construction which denies

⁴² See VA. CODE ANN. § 55-544.01 (Supp. 2011).

⁴³ VA. CODE ANN. § 58.1-3015 (2009).

⁴⁴ See 2007 Op. Va. Att'y Gen. 129, 132 (exemption not available when children, siblings or friends of a qualifying individual jointly own the real estate with the same but do not themselves qualify for the tax benefit); 1999 Op. Va. Att'y Gen. 205, 206 (exemption not available to individual proprietary lessee when a real estate cooperative association owns the real estate in question).

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the exemption.” Indeed, “where there is any doubt, the doubt is resolved against the one claiming exemption,” and “to doubt an exemption is to deny it.”⁴⁵

In light of this rule of strict construction, such an ambiguity will be resolved against eligibility, and the outcome is the same.

In pertinent part § 58.1-3219.5(A) provides:

[T]he General Assembly hereby exempts from taxation the real property, including the joint real property of husband and wife, of any veteran who has been rated . . . pursuant to federal law to have a 100 percent service-connected, permanent, and total disability, and who occupies the real property as his principal place of residence.

Section 58.1-1 defines a “taxpayer” as “every person, corporation, partnership, organization, *trust* or estate subject to taxation under the laws of this Commonwealth, or under the ordinances, resolutions or orders of any county, city, town or other political subdivision of this Commonwealth.” (Emphasis added.) Section 58.1-3281 makes it clear that the “taxpayer” assessed with real property taxes is the person or entity that owned the property on January 1 of the tax year.

Consequently, the specific exemption created by Article X, § 6-A and implemented by §§ 58.1-3219.5 and 58.1-3219.6 extends to the “taxpayer” assessed with real property taxes who is also the person or entity that owned the property on January 1 of the tax year. Article X, § 6-A includes in this exemption “joint real property of husband and wife.” If this exemption had been intended to apply to situations where real property is owned by a revocable inter vivos trust with a spouse, a revocable inter vivos trust with other(s) than the spouse, or an irrevocable trust, the General Assembly would have so provided in the question submitted to the voters on November 2, 2010, just as it did for joint ownership by husbands and wives. The statutory maxim of *expressio unius est exclusio alterius* “provides that mention of a specific item in a statute implies that omitted terms were not intended to be included within the scope of the statute.”⁴⁶

Therefore, I am of the opinion that the relief afforded pursuant to Article X, § 6-A, as implemented by §§ 58.1-3219.5 and 58.1-3219.6, is not available when the real estate is i) titled in a revocable inter vivos trust with the spouse; ii) titled in a revocable inter vivos trust with other(s) than the spouse; or iii) titled in an irrevocable trust. As with extending the exemption to spouses who survive veterans who died before the effective date, another constitutional amendment would be needed to provide tax relief for properties held in trust.

XII. Whether Tax Exemption is Exclusive to the Property Owned by the Qualifying Veteran or Whether Exemption Follows the Spouse if He or She Relocates

You relate a concern regarding a spouse’s eligibility for the property tax exemption subsequent to the death of the veteran who qualified for the exemption. You specifically inquire whether the real property tax exemption created by Article X, § 6-A, as implemented by §§ 58.1-3219.5 and 58.1-3219.6,

⁴⁵ Commonwealth v. Wellmore Coal Corp., 228 Va. 149, 153-54, 320 S.E.2d 509, 511 (1984) (alteration in original) (internal citations omitted).

⁴⁶ Turner v. Wexler, 244 Va. 124, 127, 418 S.E.2d 886, 887 (1992).

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is exclusive to the property the veteran occupied at the time of death or whether the exemption follows the spouse if he or she relocates.

You seek explanation of whether the word "property" in this context refers to the *specific* property which was initially granted the property tax exemption or is it defined as a general term used to describe any principal place of residence owned by the spouse. Section 58.1-3219.5(B) provides that a veteran's spouse remains eligible provided that "the death of the veteran occurs on or after January 1, 2011, the surviving spouse does not remarry, and the surviving spouse continues to occupy the real property as his principal place of residence."

The words "continues to occupy the real property" must be strictly construed.⁴⁷ When the surviving spouse of a veteran who qualified for the tax exemption moves to a new property, she does not "continue[] to occupy the real property" that was exempt.

Therefore, I must also conclude that the real property tax exemption created by Article X, § 6-A, as implemented by §§ 58.1-3219.5 and 58.1-3219.6, is exclusive to the property the veteran qualified for and occupied as his or her principal place of residence at the time of death, and does not follow the spouse if he or she decides to relocate.

Conclusion

Accordingly, it is my opinion that:

1. The effective date of Article X, § 6-A as approved by the voters on November 2, 2010, is January 1, 2011. The effective date of §§ 58.1-3219.5 and 58.1-3219.6 is April 6, 2011, and the legal effect of the statutory provisions must be applied retroactively to January 1, 2011;
2. The surviving spouse of a veteran who dies before the January 1, 2011, effective date of the tax exemption does not qualify for this exemption;
3. The provisions of §§ 58.1-3219.5 and 58.1-3219.6 do not apply to either veterans who die before the effective date of these provisions or their spouses who have not remarried and continue to occupy the real property as their principal place of residence;
4. The tax exemption applies to veterans rated by the VA with a total disability rating on the basis of individual unemployability due to a service-connected disability which rating revolves around the inability to engage in substantially gainful employment;
5. The commissioner of the revenue has the responsibility for interpreting and implementing §§ 58.1-3219.5 and 58.1-3219.6;
6. The General Assembly may enact legislation authorizing the Commissioner of VDVS to promulgate rules and regulations governing the administration and/or implementation of this tax exemption;
7. The General Assembly has the authority to limit the tax break to land that does not exceed one acre;

⁴⁷ VA. CONST. art. X, § 6(f).

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8. Within the context of Article X, § 6-A and §§ 58.1-3219.5 and 58.1-3219.6, the definition of "real property" includes both the dwelling and the land;
9. The tax exemption is not a "program" within the meaning of § 2.2-2001(A) and (C);
10. There is no legal authority to provide the real property tax exemption to the surviving spouse of a veteran who was rated to have a 100 percent service connected, permanent, and total disability but died before January 1, 2011;
11. The tax relief under Article X, § 6-A, as implemented by §§ 58.1-3219.5 and 58.1-3219.6, is not available when the veteran has chosen to place title to the real estate in i) a revocable inter vivos trust with the spouse; ii) a revocable inter vivos trust with other(s) apart from the spouse; or iii) an irrevocable trust; and
12. The exemption is exclusive to the property for which the veteran qualified and occupied as his or her principal place of residence at the time of death, and does not follow the spouse if he or she relocates.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General

APPENDIX J

ATTORNEY GENERAL

OPINION 15-056



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Mark R. Herring
Attorney General

December 18, 2015

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The Honorable Priscilla S. Bele
Commissioner of the Revenue
City of Newport News
2400 Washington Avenue
Newport News, Virginia 23607

Dear Ms. Bele:

I am responding to your request for an official advisory Opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether the real property tax exemption provided for in Article X, § 6-A(b) of the Virginia Constitution and § 58.1-3219.9 of the *Code of Virginia* applies to the surviving spouses of members of the armed forces killed in action prior to January 1, 2015.

Applicable Law and Discussion

In November 2014, citizens of the Commonwealth approved a constitutional amendment authorizing the General Assembly to provide by general law for a real property tax exemption for the surviving spouses of members of the armed forces who are killed in action.¹ In accord with this amendment, Article X, § 6-A(b) of the Virginia Constitution now provides as follows:

Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, may exempt from taxation the real property of the surviving spouse of any member of the armed forces of the United States who was killed in action as determined by the United States Department of Defense, who occupies the real property as his or her principal place of residence. The exemption under this subdivision shall cease if the surviving spouse remarries and shall not be claimed thereafter. *This exemption applies regardless of whether the spouse was killed in action prior to the effective date of this subdivision, but the exemption shall not be applicable for any period of time prior to the effective date.* This exemption applies to the surviving spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence and without any requirement that the spouse reside in the Commonwealth at the time of death of the member of the armed forces.²

¹ See VA. DEPT OF ELECTIONS, *Historical Elections Results – Proposed Amendment to Art. X, § 6-A of the Virginia Constitution*, http://historical.elections.virginia.gov/ballot_questions/view/2754/ (last visited Oct. 21, 2015). See generally VA. CONST. art. XII, § 1 (providing that proposed amendments to the Constitution shall be submitted by the General Assembly to the qualified voters of the Commonwealth).

² Emphasis added.

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As written, this provision makes clear that the exemption applies regardless of when the member of the armed forces was killed in action. "If a constitutional provision is plain and unambiguous, [courts] do not construe it, but apply it as written."³ Moreover, "[i]f the intention is manifest from the language used and leads to no absurd conclusion, courts must give [the provision] the effect clearly intended."⁴

On January 1, 2015, legislation implementing the tax exemption became effective.⁵ This legislation, which is codified at § 58.1-3219.9, details the exemption and provides in relevant part that:

Pursuant to subdivision (b) of Section 6-A of Article X of the Constitution of Virginia, and for tax years beginning on or after January 1, 2015, the General Assembly hereby exempts from taxation the real property described in subsection B of the surviving spouse (i) of any member of the armed forces of the United States who was killed in action as determined by the United States Department of Defense and (ii) who occupies the real property as his principal place of residence. If such member of the armed forces of the United States is killed in action after January 1, 2015, and the surviving spouse has a qualified principal residence on the date that such member of the armed forces is killed in action, then the exemption for the surviving spouse shall begin on the date that such member . . . is killed in action.⁶

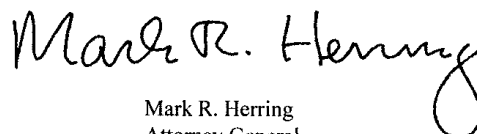
The language of this legislation is consistent with that of the constitutional provision authorizing the exemption.⁷ The significance of "January 1, 2015," involves only the tax years to which the exemption applies. Nothing in § 58.1-3219.9 serves to bar the exemption based on the date of death of the military member.

Conclusion

Accordingly, it is my opinion that the real property tax exemption provided for in Article X, § 6-A(b) of the Virginia Constitution and § 58.1-3219.9 of the *Code of Virginia* is applicable to the surviving spouses of members of the armed forces who are killed in action at any time prior to, on, or after January 1, 2015, provided all other requirements for the exemption have been met. The exemption applies for tax years beginning on or after January 1, 2015.

With kindest regards, I am

Very truly yours,



Mark R. Herring
Attorney General

³ *Town of Madison v. Ford*, 255 Va. 429, 432 (1998).

⁴ *Hollywood Cemetery Co. v. Commonwealth*, 123 Va. 106, 110-11 (1918).

⁵ See 2014 Va. Acts ch. 757.

⁶ VA. CODE ANN. § 58.1-3219.9 (Supp. 2015) (emphasis added).

⁷ See generally *Terry v. Mazur*, 234 Va. 442, 449-50 (1987) (providing that statutes inconsistent with the Virginia Constitution are invalid).

APPENDIX K

**ATTORNEY GENERAL
OPINION 16-060**



COMMONWEALTH of VIRGINIA

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June 22, 2017

The Honorable Priscilla S. Bele
Commissioner of the Revenue, City of Newport News
2400 Washington Avenue
Newport News, Virginia 23607

Dear Ms. Bele:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You inquire whether the real property tax exemption for disabled veterans and surviving spouses contained in § 58.1-3219.5 of the *Code of Virginia* is limited to the current tax year in which the disabled veteran or surviving spouse applies for the tax exemption plus the three preceding tax years; or, whether it is retroactive in application to January 1, 2011. You also inquire whether there may be administrative correction of erroneous assessments resulting from a mistake made by the taxpayer.

Background

Section 58.1-3219.5 of the *Code of Virginia* sets forth a real property tax exemption for the principal residences of fully disabled veterans and surviving spouses, under certain conditions:

A. Pursuant to subdivision (a) of Section 6-A of Article X of the Constitution of Virginia, and for tax years beginning on or after January 1, 2011, the General Assembly hereby exempts from taxation the real property, including the joint real property of husband and wife, of any veteran who has been rated by the U.S. Department of Veterans Affairs or its successor agency pursuant to federal law to have a 100 percent service-connected, permanent, and total disability, and who occupies the real property as his principal place of residence. [. . .]

B. The surviving spouse of a veteran eligible for the exemption set forth in this article shall also qualify for the exemption, so long as the death of the veteran occurs on or after

January 1, 2011, the surviving spouse does not remarry, and the surviving spouse continues to occupy the real property as his principal place of residence.^[1]

The veteran or surviving spouse is required to file with the commissioner of the revenue for the locality in which the real property is located an affidavit or written statement containing certain information in order to qualify for the exemption.²

The statute addresses the matter of refunds that are owed to qualified veterans or surviving spouses, and clearly contemplates that a veteran who has submitted the required affidavit or written statement showing entitlement to the exemption is entitled to a refund, back to the time when he or she first became eligible for it, with the only limitation being that the locality shall not be liable for interest on any refund for taxes paid prior the filing of the affidavit or written statement:

If the veteran's disability rating occurs after January 1, 2011, and he has a qualified primary residence on the date of the rating, then the exemption for him under this section begins on the date of such rating. However, no county, city, or town shall be liable for any interest on any refund due to the veteran for taxes paid prior to the veteran's filing of the affidavit or written statement required by § 58.1-3219.6.^[3]

The tax exemption statute has a lengthy legislative history. Initially, the Constitution of Virginia, which limits the granting of certain tax exemptions, was amended in 2011 to permit enactment of a tax exemption for disabled veterans and surviving spouses of qualifying veterans.⁴ Pursuant to the constitutional amendment, the statute was adopted in 2011. It had an emergency clause⁵ and was made applicable "for tax years beginning on and after January 1, 2011."⁶

The statute was subsequently amended in 2012, with the amendment clarifying whether, when, and the extent to which the tax exemption would apply under different circumstances.⁷ In 2014, the statute was again amended to change the way in which the Constitution of Virginia was cited.⁸ In 2016

¹ VA. CODE ANN. § 58.1-3219.5 (Supp. 2016).

² See § 58.1-3219.6 (2013). Official documentation of the veteran's disability status also is required; in addition, in the case of a surviving spouse who applies for the exemption, the surviving spouse must provide documentation that the veteran's death occurred on or after January 1, 2011. See *id.*

³ VA. CODE ANN. § 58.1-3219.5(A).

⁴ See VA. CONST. art. X, § 6-A; VA. DEP'T OF ELECTIONS: PROPERTY TAX EXEMPTION FOR CERTAIN VETERANS, REFERENDUM, available at http://historical.elections.virginia.gov/ballot_questions/search/year_from:2010/year_to:2010/type:is_referendum; 2011 Op. Va. Att'y Gen. 171, 174 (noting approval of the constitutional amendment by referendum on November 2, 2010, with an effective date for the amendment of January 1, 2011) (last visited June 22, 2017); see also generally 2009 Va. Acts chs. 775, 777 and 2010 Va. Acts chs. 358, 588, 771, 773, for the General Assembly's proposal of a constitutional amendment and referendum.

⁵ The statute became effective April 6, 2011, rather than the normal effective date of July 1, 2011. See 2011 Va. Acts chs. 769, 840.

⁶ *Id.*

⁷ 2012 Va. Acts chs. 75, 263, 782, 806.

⁸ 2014 Va. Acts ch. 757. The change in citation was necessitated by a constitutional amendment authorizing a tax exemption for the surviving spouses of soldiers killed in action. Pursuant to that amendment, the General Assembly enacted that exemption, but in different statutes from the present statute, which deals only with fully

the statute was amended yet again to apply the tax exemption to manufactured homes, even if the veteran does not own the land on which the home is situated, and also to certain real property improvements, beginning January 1, 2017. The 2011 exemption “start date” remained in the statute.⁹

Regarding your assessment correction inquiry, I note that a statute for the administrative correction of assessments has a three-year limit for correcting prior assessments. It is set forth in § 58.1-3980, which provides as follows:

Any person . . . assessed by a commissioner of the revenue . . . with any local tax authorized by this title . . . [who is] aggrieved by any such assessment, may, *within three years from the last day of the tax year for which such assessment is made, or within one year from the date of the assessment, whichever is later*, apply to the commissioner of the revenue or such other official who made the assessment for a correction thereof.¹⁰

Applicable Law and Discussion

Initially, I note that the tax exemption statute is retroactive on its face: despite having been amended in 2012, 2014, and 2016, it still applies to tax years going back to 2011. Additionally, it directly addresses the subject of refunds that may be due to qualified veterans for certain prior years. While not favored, retroactivity of statutes is not impermissible *per se*, and certain statutes may be applied retroactively, if that is the clear intent of the General Assembly.¹¹

Thus, the remaining question is whether the three-year limit on correcting prior assessments applies to the statute granting the tax exemption for veterans with disabilities determined as of 2011 and their surviving spouses.

Consideration of the legislative history of the exemption statute is necessary to address this question. The 2011 disability rating date was set forth in the statute upon its adoption in 2011, and that date remained in the statute following subsequent amendments. The 2016 amendment is particularly significant: it became effective January 1, 2017, and it allowed a new and expanded tax exemption, going back to 2011, for manufactured homes. Thus, this amendment, as duly adopted by the General Assembly, covered six preceding years. This time period is inconsistent with the general three-year limitation for correcting prior assessments—which would be back to 2014, but not beyond. To say that the three-year limitation period applies to the tax exemption would render meaningless the explicit statutory language

disabled veterans, not soldiers who were killed in action. *See* VA. CODE ANN. §§ 58.1-3219.9 through 58.1-3219.12 (Supp. 2016).

⁹ 2016 Va. Acts chs. 349, 393, 485.

¹⁰ Section 58.1-3980 (2013) (emphasis added).

¹¹ There are limited circumstances in which retroactivity is not permissible, such as *ex post facto* laws (VA. CONST. art. I, § 9), laws impairing the obligation of contracts (VA. CONST. art. I, § 11), and laws interfering with existing rights of action, suits, or vested property rights (*see, e.g.*, *Bailey v. Spangler*, 289 Va. 353, 359 (2015)). Retroactive laws have been approved on occasion. “As a general rule statutes relating to remedies and procedure are given a retrospective construction.” *Walke v. Dallas, Inc.*, 209 Va. 32, 35 (1968) (internal citations and quotation marks omitted). However, “[a]bsent an express manifestation of intent by the legislature, [courts] . . . will not infer the intent that a statute is to be applied retroactively.” *Bailey*, 289 Va. at 359 (citing *Ferguson v. Ferguson*, 169 Va. 77, 86-87 (1937)).

adopted with an effective date of 2017, making the tax exemption apply to all tax years back to and including 2011—a six-year period.

If one statute addresses a subject in a general way, and another in a more specific way, the latter prevails.¹² Here, we have a general statute imposing a three-year limitation on correcting assessments and a second statute that—even after being amended in 2016—specifically allows a tax exemption going back to 2011, beginning on the date of the disability rating. The specificity of the second statute (creating the tax exemption going back to 2011) thus prevails over the general language of the first statute (imposing a three-year limit on correcting assessments).

We must assume that the General Assembly chose with care the words it used when it enacted a statute¹³ and legal effect must be given to legislative intent “as expressed by the language used in the statute.”¹⁴ Therefore, I must conclude that it was the intent of the General Assembly that the three-year limitation period not apply to this tax exemption statute.

Regarding your second inquiry, it is my opinion that an erroneous assessment arising from a mistake of the taxpayer is still entitled to administrative correction pursuant to § 58.1-3980.¹⁵ This section does not attempt to allocate fault. It merely allows a taxpayer who is “aggrieved by [an] assessment” to apply for its “correction.”¹⁶ Thus, any taxpayer aggrieved by an assessment—regardless of cause or fault, if any—may apply for correction.

Conclusion

Accordingly, it is my opinion that a disabled veteran, or the surviving spouse of a disabled veteran, who has provided the required affidavit or written statement showing compliance with all applicable requirements for the tax exemption provided by the General Assembly in §§ 58.1-3219.5 and 58.1-3219.6, is entitled to enjoy that tax exemption, beginning on the date of the disability rating, including all prior years back to and including 2011. The locality is not liable for any interest on any refund due to the veteran for taxes paid prior to the veteran's filing of the required affidavit or written

¹² Lynchburg Div. of Soc. Servs. v. Cook, 276 Va. 465, 481 (2008) (quoting Alliance to Save the Mattaponi v. Commonwealth Dept. of Env'tl. Quality *ex rel.* State Water Control Bd., 270 Va. 423, 439-40 (2005) (“A cardinal rule of statutory interpretation is that ‘[w]hen one statute addresses a subject in a general manner and another addresses a part of the same subject in a more specific manner, the two statutes should be harmonized, if possible, and when they conflict, the more specific statute prevails.’”

¹³ Alger v. Commonwealth, 267 Va. 255, 261 (2004) (citations omitted).

¹⁴ Cuccinelli v. Rector & Visitors of the Univ. of Va., 283 Va. 420, 425 (2012) (quoting Commonwealth v. Amerson, 281 Va. 414, 418 (2011)) (internal citation and quotation marks omitted).

¹⁵ “[T]axpayer mistakes do not abrogate the duty of the commissioner of the revenue to correct an erroneous assessment, and [] a commissioner of the revenue may not deny a correction ‘based on equitable factors such as the taxpayer’s mistake.’” 2000 Op. Va. Att’y Gen. 218, 219 (quoting 1991 Op. Va. Att’y Gen. 282, 284). *See also* 1991 Op. Va. Att’y Gen. 282, 284 (“The fact that a taxpayer’s mistake causes the commissioner of the revenue erroneously to assess the taxpayer’s property does not relieve the commissioner of the revenue of his statutory duty under § 58.1-3981 to correct an erroneous assessment”); 1983-1984 Op. Va. Att’y Gen. 346, 347 (opining that the taxpayer’s filing of an erroneous return did not prevent administrative correction of the assessment).

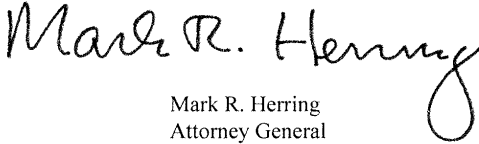
¹⁶ Section 58.1-3980.

Honorable Priscilla S. Bele
June 22, 2017
Page 5

statement. Further, an erroneous assessment arising from a mistake of a taxpayer is entitled to administrative correction under § 58.1-3980.

With kindest regards, I am

Very truly yours,


Mark R. Herring
Attorney General

APPENDIX L

SAMPLE TAX EXEMPTION APPLICATION FORM



LOCALITY
CoR
 Commissioner of the Revenue
 Address 1
 City, VA, 99999
www.localwebsite.gov

Need Assistance?
(999) 999-9999
Fax: (999) 999-9999

APPLICATION FOR REAL PROPERTY TAX RELIEF FOR VETERANS WITH 100% SERVICE-CONNECTED DISABILITY

QUALIFICATIONS:		
<ul style="list-style-type: none"> • Disability of Veteran must be 100% service-connected AND permanent AND total. • Residence must be Veteran's primary residence (proof, such as resident State tax return, may be requested). • Spouse (if applicable) must also be identified. • Deceased Veteran (if applicable) must have died on or after January 1, 2011. • Surviving Spouse (if applicable) must not be remarried. • Surviving Spouse (if applicable) must continue to reside in primary residence. 		
REQUIRED DOCUMENTATION:		
<ul style="list-style-type: none"> • Certification of disability from the Department of Veterans Affairs indicating the disability is: (a) 100% service-connected, AND (b) permanent, AND (c) total. • A copy of a recent utility bill for the personal residence. • (If applicable) Copy of Veteran's death certificate showing death occurred on or after January 1, 2011. 		
APPLICANT INFORMATION		
Name of Veteran (<i>Last, First, Middle Initial</i>):	Social Security No	Telephone No(s):
Name of Spouse (<i>Last, First, Middle Initial</i>):	Social Security No.:	Telephone No(s):
Address of Primary Residence To Be Granted Local Real Estate Tax Relief:		
Mailing Address (<i>if different from Primary Residence Address</i>):		
Is the above-listed Primary Residence occupied by the Veteran? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is the above-listed Primary Residence occupied by the Veteran's Surviving Spouse? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is the above-listed Primary Residence jointly owned by the Veteran and Spouse? <input type="checkbox"/> Yes <input type="checkbox"/> No (If no, please describe ownership.)		
If the Veteran is deceased, has the above-named Surviving Spouse remarried? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Certification from the U.S. Department of Veterans Affairs of 100% service-connected, permanent, and total disability is: <input type="checkbox"/> Attached <input type="checkbox"/> Already on file with the Commissioner of Revenue		
CERTIFICATION		
VETERAN:		
I declare, under penalty of perjury, that the above-listed physical address is occupied as my primary place of residence, that I have provided to this office the original, designated U.S. Department of Veterans Affairs letter issued to me attesting to my 100% service-connected, permanent, and total disability, and that I understand I must reapply for tax relief if my primary place of residence changes. I further declare, under penalty of perjury, that the foregoing information and accompanying documentation are true, correct, and complete to the best of my knowledge and belief.		
Signature of Applicant/Owner _____	Signature of Co-Owner/Spouse _____	Date _____
(OR) SURVIVING SPOUSE OF VETERAN:		
I declare, under penalty of perjury, that I am the Surviving Spouse of the above-listed Veteran, that I have presented to this office a certified copy of the Veteran's death certificate confirming a date of death on or after January 1, 2011, that I continue to occupy the above-listed physical address as my primary place of residence, that I have provided to this office the original, designated U.S. Department of Veterans Affairs letter issued to the Veteran attesting to his/her 100% service-connected, permanent, and total disability, and that I have not remarried. I further declare, under penalty of perjury, that the foregoing information and accompanying documentation are true, correct, and complete to the best of my knowledge and belief.		
Signature of Surviving Spouse _____	Date _____	
Signature of Preparer (if not Applicant) _____	Relationship _____	Telephone No. _____ Date _____

FOR MORE INFORMATION, CONTACT:		
Office of the Commissioner of the Revenue Email: employee@locality.gov Telephone: 999-999-9999 Facsimile: 999-999-9999	Mailing Address: Address Physical Address: Street address Website: www.localityname.gov	
IMPORTANT INFORMATION		
<p>Pursuant to Article X, Section 6-A of the Constitution of Virginia, the General Assembly exempted from taxation the real property, including the joint real property of husband and wife, of any Veteran who has been rated by the U.S. Department of Veterans Affairs or its successor agency pursuant to federal law to have a 100 percent service-connected, permanent and total disability, and who occupies the real property as his/her primary place of residence.</p> <p>The Surviving Spouse of a Veteran eligible for the exemption set forth in this Article shall also qualify for the exemption, so long as the death of the Veteran occurred on or after January 1, 2011, the Surviving Spouse does not remarry, and the Surviving Spouse continues to occupy the real property as his/her primary place of residence.</p> <p>The Veteran or Surviving Spouse claiming the exemption under this Article shall file with the Commissioner of the Revenue an Application, including Certification:</p> <ul style="list-style-type: none"> (a) setting forth the name of the disabled Veteran and the name of the Spouse (if any) also occupying the real property, (b) indicating whether the real property is jointly owned by the husband and wife, (c) certifying that the real property is occupied as the primary residence by either the Veteran or Surviving Spouse (if applicable); and (d) certifying that the Surviving Spouse (if applicable) has not remarried. <p>The Veteran or Surviving Spouse shall also provide documentation from the U.S. Department of Veterans Affairs or its successor indicating that the Veteran has a 100 percent service-connected, permanent, and total disability. This document can be obtained by filing a <i>VA Form 21 1138</i> with the regional office of the Department of Veterans Affairs at <i>U.S. Department of Veterans Affairs, Regional Office, 210 Franklin Rd SW, Roanoke, VA 24011</i>. The Veteran shall only be required to re-file the required information if the Veteran's primary residence changes. If a Surviving Spouse of a Veteran is applying for the exemption, the Surviving Spouse shall also provide documentation that the Veteran's death occurred on or after January 1, 2011.</p>		
<p>Privacy Act Notice: Disclosure of your social security number on this form is mandatory, as authorized by the Virginia State Code, Section 58.1-3017. Social security numbers are regarded as confidential, and except as otherwise provided by law, those numbers will not be disclosed for any other purpose.</p>		
** FOR OFFICE USE ONLY **		
Date Application Received:	PIN:	
Acreage:	Map No.:	
Qualifies for Relief: <input type="checkbox"/> Yes <input type="checkbox"/> No If no, explain:		
	Exempted	Taxable
Land Value		
Building Value		
Total Value:		
Tax Rate:		
Total Taxes		
Amount of Relief		

APPENDIX M

SAMPLE VA BENEFITS SUMMARY LETTERS



**Department of
Veterans Affairs**

210 FRANKLIN RD SW
ROANOKE VA 24011

March 15, 2017

Veteran's Name:

This letter is a summary of benefits you currently receive from the Department of Veterans Affairs (VA). We are providing this letter to disabled Veterans to use in applying for benefits such as housing entitlements, free or reduced state park annual memberships, state or local property or vehicle tax relief, civil service preference, or any other program or entitlement in which verification of VA benefits is required. Please safeguard this important document. This letter replaces VA Form 20-5455, and is considered an official record of your VA entitlement.

—America is Grateful to You for Your Service—

Our records contain the following information:

Personal Claim Information:

Your VA claim number is:

You are the Veteran

Military Information:

Your character(s) of discharge and service date(s) include:

Army, Honorable, 09-Jan-1970 - 15-Aug-1971

(You may have additional periods of service not listed above)

VA Benefits Information:

Service-connected disability: Yes

Your combined service-connected evaluation is: 100 PERCENT

The effective date of the last change to your current award was: 01-DEC-2016

Your current monthly award amount is: \$2,915.55

Are you considered to be totally and permanently disabled due to your service-connected disabilities: Yes

You should contact your state or local office of Veterans' affairs for information on any tax, license, or fee-related benefits for which you may be eligible. State offices of Veterans' affairs are available at <http://www.va.gov/statedva.htm>.

Need Additional Information or Verification?

If you have any questions about this letter or need additional verification of VA benefits, please call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the federal relay number is 711. Send electronic inquiries through the Internet at <https://iris.va.gov>.

Sincerely yours,

Regional Office Director



**Department of
Veterans Affairs**

PO BOX 100021
DECATUR GA 30031-7021

April 18, 2011

Veteran's Name:

This letter is a summary of benefits you currently receive from the Department of Veterans Affairs (VA). We are providing this letter to disabled Veterans to use in applying for benefits such as housing entitlements, free or reduced state park annual memberships, state or local property or vehicle tax relief, civil service preference, or any other program or entitlement in which verification of VA benefits is required. Please safeguard this important document. This letter replaces VA Form 20-5455, and is considered an official record of your VA entitlement.

--America is Grateful to You for Your Service--

Our records contain the following information:

Personal Claim Information:

Your VA claim number is:
You are the Veteran

Military Information:

Your character(s) of discharge and service date(s) include:

Air Force, Honorable, 18-Nov-1960 - 26-May-1961
Army, Honorable, 25-Feb-1963 - 09-Jul-1963

(You may have additional periods of service not listed above)

VA Benefits Information:

Service-connected disability: Yes

Your combined service-connected evaluation is: 80 PERCENT

The effective date of the last change to your current award was: 01-DEC-2008.

Your current monthly award amount is: \$2,823.00

Are you being paid at the 100 percent rate because you are unemployable due to your service-connected disabilities: Yes

Are you considered to be totally and permanently disabled due to your service-connected disabilities: Yes

Have you received a Specially Adapted Housing (SAH) and/or Special Home Adaptation (SHA) grant: No

You should contact your state or local office of Veterans' affairs for information on any tax, license, or fee-related benefits for which you may be eligible. State offices of Veterans' affairs are available at <http://www.va.gov/statedva.htm>.

APPENDIX N

SAMPLE VA FORM 21-4138

**VETERAN REQUEST FOR
VA PROOF OF RATING**



Department of Veterans Affairs

STATEMENT IN SUPPORT OF CLAIM

PRIVACY ACT INFORMATION: The VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.576 for routine uses (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA Programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 50VA2122, Compensation, Pension, Education and Rehabilitation Records - VA, published in the Federal Register. Your obligation to respond is required to obtain or retain benefits. VA uses your SSN to identify your claim file. Providing your SSN will help ensure that your records are properly associated with your claim file. Giving us your SSN account information is voluntary. Refusal to provide your SSN by itself will not result in the denial of benefits. The VA will not deny an individual benefits for refusing to provide his or her SSN unless the disclosure of the SSN is required by Federal Statute of law in effect prior to January 1, 1975, and still in effect. The requested information is considered relevant and necessary to determine maximum benefits under the law. The responses you submit are considered confidential (38 U.S.C. 5701). Information submitted is subject to verification through computer matching programs with other agencies.

RESPONDENT BURDEN: We need this information to obtain evidence in support of your claim for benefits (38 U.S.C. 501(a) and (b)). Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 15 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.whitehouse.gov/omb/library/OMBINVS.html#VA. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.

FIRST NAME - MIDDLE NAME - LAST NAME OF VETERAN <i>(Type or print)</i>	SOCIAL SECURITY NO.	VA FILE NO.
		C/CSS -

The following statement is made in connection with a claim for benefits in the case of the above-named veteran:

I AM 100% SCD AND AM REQUESTING A LETTER STATING THAT I AM RATED 100% PERMANENTLY AND TOTALLY DISABLED BY THE U.S. DEPARTMENT OF VETERANS AFFAIRS.

THIS LETTER WILL BE PROVIDED TO THE COMMISSIONER OF THE REVENUE FOR A REAL ESTATE TAX EXEMPTION FOR QUALIFIED DISABLED VETERANS. I REQUEST YOU ISSUE A LETTER SIMILAR TO THE ATTACHED SAMPLE LETTER WHICH INCLUDES ALL REQUIRED INFORMATION.

I CERTIFY THAT the statements on this form are true and correct to the best of my knowledge and belief.

SIGNATURE	DATE SIGNED	
ADDRESS	TELEPHONE NUMBERS <i>(Include Area Code)</i>	
	DAYTIME	EVENING

PENALTY: The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false.

APPENDIX O

**SAMPLE DD FORM 1300
REPORT OF CASUALTY**

REPORT OF CASUALTY		REPORT CONTROL SYMBOL DD-P&R(AR)1664			
					1. REPORT TYPE
3. SERVICE IDENTIFICATION					
a. NAME <i>(Last, First, Middle and Suffix)</i>		b. SOCIAL SECURITY NO.	c. RANK	d. PAY GRADE	e. OCCUPATIONAL CODE/ RATING
f. COMPONENT	g. BRANCH	h. ORGANIZATION			
4. CASUALTY INFORMATION					
a. TYPE	b. STATUS	c. CATEGORY	d. DATE OF CASUALTY	e. PLACE OF CASUALTY	
f. CIRCUMSTANCES					
g. DUTY STATUS				h. BODY RECOVERED	
5. BACKGROUND INFORMATION					
a. DATE OF BIRTH	b. PLACE OF BIRTH		c. COUNTRY OF CITIZENSHIP		
d. RACE					
e. ETHNICITY				f. SEX	
g. RELIGIOUS PREFERENCE					
6. ACTIVE DUTY INFORMATION					
a. PLACE OF ENTRY		b. DATE OF ENTRY	c. HOME OF RECORD AT TIME OF ENTRY		
7. INTERESTED PERSONS/REMARKS <i>(Name, Address, and Relationship) (Continue on separate sheet, if necessary)</i>					
<p>FOOTNOTES: 1 Primary next-of-kin. 2 Beneficiary(ies) for death gratuity - as designated on record of emergency data. 3 Beneficiary for unpaid pay and allowances - as designated on record of emergency data.</p>					
8. REPORTING INFORMATION					
a. COMMAND AGENCY				b. DATE RECEIVED	
9. DISTRIBUTION			10. SIGNATURE ELEMENT		
NOTE: This form may be used to facilitate the cashing of bonds, the payment of commercial insurance, or in the settlement of any other claim in which proof of death is required.					

APPENDIX P

FREQUENTLY ASKED QUESTIONS

Frequently Asked Questions

These are questions that have come directly from Commissioners of the Revenue to DVS and are representative of the issues facing offices around the Commonwealth. Any Commissioner of the Revenue or other assessing official may always email or call the DVS Policy Director directly with questions about a specific application.

Qualifications

Q. Must the veteran have a specific letter or may they use any official correspondence from the VA that says “100% service-connected, permanent, and totally disabled”?

A. YES. *The U.S. Department of Veterans Affairs mass mailed letters dated 4/18/2011 to ALL disabled veterans in Virginia. The letter has a section near the bottom of the first page called **VA Benefits Information** which provides questions and answers to the three factors for making an exemption determination. Examples are found in **Appendix C***

- *Service-connected disability: **Yes/No** Your combined service-connected evaluation is: **XX%***
- *Are you being paid at the 100 percent rate because you are unemployable due to your service-connected disabilities: **Yes/No or Not Indicated***
- *Are you considered to be totally and permanently disabled due to your service-connected disabilities: **Yes/No****
- **If the “total and permanent” line is not in the letter then the veteran has **not** been given the permanent and total rating.*
- **Some may say 100% disability rating but **it is a temporary condition**. The letter may include a date for another evaluation in the future. In that case, the rating is temporary and the person is not eligible.*
- *This letter has been developed and mailed especially to assist Commissioners of the Revenue in making their decisions.*
- *If the veteran did not receive the 4/18/2011 letter, the Commissioner of the Revenue or other assessing official should fill out VA form 21-4158 with a request to send a letter in order to get the same information in this format. **Substitute letters should not be accepted.***

Q. Do the provisions of §§ 58.1-3219.5 and 58.1-3219.6 apply to veterans rated by the U.S. Department of Veterans Affairs (VA) with a total disability rating on the basis of individual unemployability due to service-connected disability?

A. Yes. *The tax exemption applies to veterans rated by the VA with a total disability rating on the basis of individual unemployability due to a service-connected disability which rating. (AG Opinion 7/15/11)*

- *If the person has an overall rating less than 100% but has that second designation of “being paid at the 100 percent rate because you are unemployable due to your service-connected disabilities” AND they have the permanent and total rating listed on the letter, then **they are eligible**.*

Q. If the disabled veteran can no longer live unattended and someone moves into the real property to assist with care – does the exemption continue to apply?

A. *This only relates to the income provisions in Tax Relief for the Elderly and Disabled program, and is not applicable to disabled veterans – unless they are named on the title. In that case, an apportionment of the exemption may be necessary. If the caregiver moves into the veteran's primary residence and the veteran's name remains on the mortgage/deed to the house in full or part then they still qualify.*

Q. Do the provisions of §§ 58.1-3219.5 and 58.1-3219.6 apply to veterans who are disabled before the effective date of these provisions?

A. Yes. *As long as the veteran meets all other qualifications, the service-connected disability can be from a conflict pre-2011.*

Q. Does a legal means exist to extend the tax exemption to the surviving spouse of a veteran who was rated 100% service-connected, permanent, and total disability but died before the exemption's effective date?

A. *Any such authority would have to come from the General Assembly and voters of Virginia through an amendment to the Constitution.*

Surviving Spouse

Q. Does a surviving spouse who was married to an eligible veteran qualify for the tax exemption when the veteran was disabled before the effective date of the tax exemption?

A. *The surviving spouse of a veteran who is disabled before the January 1, 2011, but still alive on or after January 1, 2011 does qualify for this exemption. (AG Opinion 7/15/11) The veteran may have sustained injuries/disability in any conflict and qualify – as long as they are alive on the effective date.*

Q. Do the provisions of §§ 58.1-3219.5 apply to otherwise qualifying veterans who die before the effective date of these provisions, and their spouses who have not remarried and continue to occupy the real property as their principal place of residence?

A. *The provisions of §§ 58.1-3219.5 do not apply. (AG Opinion 7/15/11 for §§ 58.1-3219.5)*

Q. Does the surviving spouse of a service member killed in action before January 1, 2015 qualify?

A. *Yes. This exemption applies regardless of whether the spouse was killed in action prior to the effective date of this subdivision, but the exemption shall not be applicable for any period of time prior to the effective date.(AG Opinion 12/18/15, please see **Appendix G**)*

Q. Does the tax exemption apply to Virginians who were killed in the Pentagon on 9/11?

A. *The exemption currently does not apply to surviving spouses of those who died on 9/11 under either §§ 58.1-3219.5 or 58.1-3219.9. The DD-1300 forms provided by DOD do not list those who died at the Pentagon as having died in combat. Any such authority to include 9/11 spouses would have to come from the General Assembly.*

Q. Should the exemption granted to the disabled veteran be included in the tax exempt real estate book?

A. *These exemptions should be treated like tax relief for the elderly/disabled exemptions. Code section 58.1-3219 for disabled veterans is included under Chapter 32 for Real Property Tax instead of under Chapter 36 for Tax Exempt Property. They should be listed in the taxable book and the exemption handled similar to TRE reductions. Information should be confidential.*

Q. I have towns in my county. Does the veteran have to also file with the town to qualify for the exemption for town real estate tax?

A. *Unlike the regular tax relief program, there is no provision for the town to have different requirements for the exemption; therefore, filing with the county commissioner or assessor is all that is required. However the Commissioner or Assessor will need to notify the town office of any qualified taxpayer in their respective towns.*

Q. Who is the correct official in the Commonwealth who has the responsibility for interpreting and implementing §§ 58.1-3219.5 and 58.1-3219.6?

A. *The Commissioner of the Revenue has the responsibility for interpreting and implementing §§58.1-3219.5 and 58.1-3219.6. (AG Opinion 7/15/11) However, effective in April 2012 the Commissioner of the Department of Veteran's Services was tasked with the responsibility for promulgating rules and regulations governing the administration and implementation of the property tax exemption. The DVS Commissioner may also receive and decide appeals upon denial of an application.*

Q. Is the tax exemption a “program” within the meaning of § 2.2-2001(A) and (C)?

A. No. *The tax exemption is not a “program” within the meaning of § 2.2-2001(A) and (C). (AG Opinion 7/15/11)*

Property Issues

Q. If the mobile home is classified as the primary residence and taxed at the real estate rate, does the exemption apply? Does it apply to the parcel per the acreage limits?

A. *As of July 1, 2016 mobile or manufactured homes qualify – if the qualifying veteran meets all other requirements and has proof that the manufactured home is his/her primary residence. Manufactured/mobile homes used for camping or other non-primary residence uses do not qualify. If the veteran owns the manufactured/mobile home but not the land it sits upon, then the land does not qualify for the tax exemption and the two can be separated out for tax purposes. If the veteran owns the land and the manufactured/mobile home, then the acreage limits apply and both the land and manufactured/mobile home qualify for the tax exemption.*

Q. Can the real property in question be under construction and receive the benefit of the disabled veteran exemption?

A. *The Code requires the real property to be occupied as the principal residence of the veteran. A home under construction will not qualify for tax years before it is complete and inhabited by the veteran or surviving spouse.*

Q. Are improvements to the primary residence or land able to receive the benefit of the disabled veteran exemption? i.e., sheds, barns, other buildings?

A. *Any improvements, additions, etc. to the primary residence must be attached the primary residence. As of January 1, 2017, the law allows for inclusion in the exemption of improvements to be made “other than the dwelling” including the land upon which the improvement is situated – so long as “the principal use of the improvement is (i) to house or cover motor vehicles or household goods and personal effects as classified in subdivision A 14 of § [58.1-3503](#) and as listed in § [58.1-3504](#) and (ii) for other than a business purpose.” This means that a veteran or surviving spouse who qualifies for the real property tax exemption and who builds or modifies or improves upon a car port, garage, storage shed or other structure for the housing or covering of a motor vehicle or certain household goods as classified in the listed Code sections can include those improvements in the exemption from taxation. This does not include other improvements to the land or for building or modifying structures*

that do not meet this narrow distinction. It will not include building guest houses, free-standing offices, additional residences, pools or spas, etc.

Q. Does the General Assembly have the authority to enact the provision in § 58.1-3219.5 that restricts the tax exemption to land not exceeding one acre in size?

A. *The General Assembly has the authority to limit the tax break to land that does not exceed one acre. (AG Opinion 7/15/11)*

Q. Where can I find the definition of the term “real property” and other terms related to this tax exemption?

A. *All relevant terms are defined in the Policy Regarding the Mandate §§ 58.1-3219.5 and 58.1-3219.9, which is contained in this publication and upon request to DVS.*
