

Legislative Analysis



DISABLED VETERANS PROPERTY TAX EXEMPTION

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Senate Bill 352 (Substitute S-1, as amended by Senate)

Sponsor: Sen. Dave Hildenbrand

Senate Committee: Finance

House Committee: Tax Policy

Complete to 6-19-13

A REVISED SUMMARY OF SENATE BILL 352 AS REPORTED FROM HOUSE COMMITTEE 6-5-12

The General Property Tax Act currently provides a property tax exemption for the principal residence of a veteran with a service-connected disability who requires the residence to be specially adapted to accommodate a service-connected disability and who has received financial assistance from the U.S. Department of Veterans Affairs (VA) to adapt the home to the disability. The act continues to exempt the principal residence when owned by the unremarried surviving spouse of the disabled veteran.

Senate Bill 352 (S-1) would extend the property tax exemption so that it would also apply to the principal residence of veterans who have been *permanently and totally* disabled (as determined by the VA) as the result of military service and are entitled to veterans benefits at the 100% rate.¹ The bill also provides that the continued exemption for the unremarried surviving spouse applies whether the veteran died before or after the original exemption was granted.

The bill also contains an enacting section specifying that the provisions could be cited as the Dannie Lee Barnes Disabled Veteran Property Tax Relief Act.

BACKGROUND INFORMATION:

MTT Decision: Barnes v. Cascade Township

Reportedly, this bill was prompted, in part, by the Michigan Tax Tribunal's decision in *Barnes v. Cascade Township* (MTT Small Claims Division Docket No. 31525). At issue in the case was whether the exemption provided in MCL 211.7b applied to the surviving spouse of a disabled veteran who had been granted (but never ultimately received) pecuniary assistance from the VA to adapt the home and who submitted the original affidavit claiming the exemption after the veteran died. The Proposed Opinion and Judgment of the administrative law judge (ALJ) describes the history of the case as follows:

¹ This would appear to apply to veterans who have a total and permanent (100%) disability rating and also veterans who have a rating of less than 100% who have an individual unemployability (IU) rating determination that entitles them to veterans disability compensation at the 100% rate even though they do not have a 100% rating.

Prior to November, 2003, Petitioner and her husband, Dannie Barnes, owned a home [in Grand Rapids]. Mr. Barnes was living in an assisted living facility at the time. Mrs. Barnes held a durable power of attorney for her husband who was not competent to handle his own affairs. In 2003 and thereafter, she was in the process of applying for a grant for specially adapted housing from the US Department of Veterans Affairs, who had inspected the property [in Grand Rapids] and determined that it was not suitable to be adapted for Mr. Barnes' needs, and that she would need to buy a new house. She then located and purchased the property [in Cascade Township] and took possession in November, 2003. The home [in Grand Rapids] was sold and the proceeds were used to pay for the new house....The VA inspected the new home and determined that it was suitable for adaptation. A contractor was located to make the necessary adaptations, plans were drawn, and a contract was signed. The work was scheduled to commence on March 10, 2004. The work was to include entrance and exit ramps and a chair lift in the garage. The property was purchased because the doorways were wide enough for a wheel chair and it had a spacious attached garage. The bath and shower were to be remodeled for handicapper accessibility as well. The subject property was purchased with Petitioner's own funds and not with grant money.

By letter dated March 10, 2004, Petitioner was notified by the VA that she was approved to receive a \$50,000 grant for the purpose of adapting the subject property for her husband's special needs. The money was to be placed in escrow (with a lawyer from the VA acting as the escrow agent) and the funds were to be released to the contractor as work progressed. No application for a property tax exemption was filed with the 2004 March Board of Review in Cascade Township. Mrs. Barnes states that she intended to file for the exemption in 2004, but was told that her application was too late.

Mr. Dannie Barnes passed away on March 30, 2004.

The contractor was scheduled to begin work on March 30, 2004, but due to Mr. Barnes passing, "everything stopped," said Mrs. Barnes. The grant money was never received but "the money went back" to the United States government, she said. None of the planned work was ever done.

Subsequently Mrs. Barnes submitted an application for the tax exemption to the township Board of Review. The board denied the exemption but noted that it was "unable to properly interpret the law governing this case due to insufficient guidelines." Mrs. Barnes then appealed to the Michigan Tax Tribunal. The Proposed Opinion and Judgment of the ALJ concluded that,

It is clear that, although Mr. Barnes had been approved to receive a grant, the grant was never actually received. The letter from the VA dated March 10, 2004 itself states that further conditions needed to occur before the money could be made available to Petitioner. Therefore, it cannot be concluded that Mr. Barnes or Mrs. Barnes were "receiving" or had received "pecuniary assistance due to disability for specially adapted housing. Further, at the time of the application in 2005 and 2006, neither Mr. Barnes nor Mrs. Barnes could claim that they "own and occupy as a homestead, certain specially adapted housing...." The special

adaptations had never been completed. The statute expressly requires that the exemption under MCL 211.7b is only available to a soldier or sailor who "is receiving or has received pecuniary assistance due to disability for specially adapted housing." In this case, it cannot be concluded that pecuniary assistance was ever received. Furthermore, the subject property is not "specially adapted housing." The grant had been authorized for the purpose of completing the special adaptations to the subject property, but was never "received" by either Mr. or Mrs. Barnes. Quite sadly, the death of Mr. Barnes eliminated the need for the grant, which was effectively withdrawn. Had the adaptations been completed, and had the grant money been actually appropriated for that purpose, a different case would be presented. However, on these facts, where no special adaptations were completed and no pecuniary assistance was received, the exemption under MCL 211.7b is not available to this Petitioner.

The statute provides the exemption for "real estate used and owned as a homestead" by a qualifying soldier. There is no question that Mr. Barnes was a "qualifying soldier" until the date of his death. However, the subject property was never used as a homestead by Mr. Barnes, but, as explained above, he never actually "received" pecuniary assistance due to disability for specially adapted housing.

Furthermore, Mr. Barnes never applied for and was never granted the property tax credit under MCL 211.7b. That statute contains a provision by which a surviving spouse of a qualified soldier shall continue to receive the property tax exemption that has been previously granted. The statutory language states that in such cases, "the exemption shall continue in favor of the unremarried surviving spouse" as long as the spouse files an affidavit that she is the surviving spouse of a soldier qualified for the exemption. There is nothing in the text of the statute that states or implies that Mr. Barnes would have qualified for the exemption for a property that was never converted to "specially adapted housing." The intent of the statute is to allow the exemption for property that is actually used as "specially adapted housing" and the subject property was never so used. The subject property is not and never has been "specially adapted housing." It is apparent that that once the exemption is granted, it continues to exist in favor of a surviving spouse after the death of the qualifying soldier or sailor. However, there is no indication from the statutory language that the exemption applies to property owned by a surviving spouse where the property was never used as specially adapted housing and where no exemption had been previously granted to a qualifying soldier or sailor.

VA Assistance for Adapted Housing

The existing property tax exemption is available only to principal residences of service-connected disabled veterans who receive assistance from the VA to adapt their home to accommodate their daily living/mobility needs. The VA provides Specially Adapted Housing (SAH) grants under 38 USC 2101(a) to assist in the construction or acquisition of a specially adapted home (or the remodeling of an existing home into a specially adapted home) for veterans and service members with service-connected disabilities.²

² http://www.benefits.va.gov/homeloans/documents/docs/part1_va_pamphlet_26_jrd_edits_doc.pdf.

The goal is to provide a barrier-free living environment to afford the veteran a degree of independent living that would not otherwise occur without the modifications. The eligibility requirements include:

- The loss (or loss of use) of both lower extremities which requires the aid of braces, crutches, canes, or a wheelchair for locomotion (self-propulsion).
- The loss (or loss of use) of one or more lower extremities where the loss so affects balance and propulsion, requiring the aid of braces, crutches, canes, or wheelchair. (This disability must have occurred after September 11, 2011, and must be approved for assistance before September 30, 2013.)
- Blindness in both eyes, having only light perception, together with the loss (or loss of use) of at least one lower extremity.
- The loss (or loss of use) of one lower extremity together with either of the following conditions so as to require the aid of braces, crutches, canes, or wheelchair for locomotion:
 - Residual of organic disease
 - The loss (or loss of use) of one upper extremity.
- Disability due to a severe burn.
- The loss (or loss of use) of both upper extremities, preventing the use of the arms at or above the elbow.

Additionally, it must be medically feasible for the veteran to live in the residence; the house must be adapted to the veteran's needs; and it must be feasible (with grant assistance) for the veteran to purchase the residence. The SAH grant may be used up to three times, with the maximum amount of assistance set at \$63,780 per lifetime, subject to annual increases in the lifetime maximum based on the cost of construction of residential homes. For FY 2013, the limit is set at \$64,960.

The VA also provides a Special Housing Adaption (SHA) grant under 38 USC 2101(b) providing assistance to veterans to achieve mobility in their home, but not to the degree required for those who are unable to walk or who need assistance in order to walk.³ To be eligible for an SHA grant, the veteran must have a service-connected disability meeting any of the following criteria:

- Blindness in both eyes, with visual acuity of 20/200 or less in the better eye with the use of a corrective lens.
- The loss (or loss of use) of both hands or extremities below the elbow.
- A severe burn injury.

The SHA grant may be used up to three times, with the maximum amount of assistance set at \$12,756 per lifetime, subject to annual increases in the lifetime maximum based on the cost of construction of residential homes. For FY 2013, the limit is set at \$12,992.

The number of Michigan veterans that have received adaptive housing assistance is not immediately known, although federal data indicates there were 48 policyholders of

³ http://www.benefits.va.gov/homeloans/documents/docs/part2_va_pamphlet_26_jrd_edits_doc.pdf.

Veterans Mortgage Life Insurance (VMLI) as of December 31, 2012.⁴ The VMLI program provides insurance of up to \$200,000 to pay off the home mortgages upon the death of a disabled veteran. The program is only available to recipients of a specially adapted housing (SAH) grant. Federal data indicates the total face amount of VMLI policies is \$6.0 million as of December 31, 2012.⁵

VA Disability Rating System

The Department of Veterans Affairs utilizes a disability evaluation and rating system to determine the progression of the severity of a veteran's disability over time and the effect of that disability on the veteran's employability within the civilian job market. The VA devised a rating system, known as the Veterans Administration Schedule for Rating Disabilities (VSARD), assessing the medical conditions and illnesses incurred or aggravated during the veteran's military service and assigning a percentage rating (0%-100% specified in 10% increments) based on the severity of the disability.

The basic premise is that this disability rating "represent[s] as far as can practicably be determined the average impairment in earning capacity resulting from such diseases and injuries [incurred in military service] and their residual conditions in civil occupations. Generally, the degrees of disability specified are considered adequate to compensate for considerable loss of working time from exacerbations or illnesses proportionate to the severity of the several grades of disability."⁶

The disability rating is used to determine the amount of monthly disability compensation benefits, eligibility for other benefits, and priority for VA medical care the veterans may receive. The table below, taken from Census Bureau data, shows the approximate number of Michigan veterans with a service-connected disability and their corresponding disability rating.

<u>Disability Status</u>	<u>Number</u>
Has No Service-Connected Disability	590,556
Has a Service-Connected Disability	80,495
0 percent	4,741
10 or 20 percent	26,699
30 or 40 percent	14,916
50 or 60 percent	10,134
70 percent or higher	18,311
Rating Not Reported	5,694
Total Number of Veterans	671,051

Source: Census Bureau – American Community Survey (2011)

With respect to "total and permanent" disability ratings, the VA's disability rules state,

⁴ <https://explore.data.gov/Banking-Finance-and-Insurance/Provides-number-of-life-insurance-policyholders-fo/vzj2-jamp>.

⁵ <https://explore.data.gov/Banking-Finance-and-Insurance/Face-Amount-of-Life-Insurance-Coverage-by-Program-/9s7q-k22v>.

⁶ 38 CFR 4.1. The VA rating schedule is specified in Title 38 (Pensions, Bonuses, and Veterans' Relief), Part 4 (Schedule for Rating Disabilities) of the Code of Federal Regulations.

*Permanence of total disability will be taken to exist when such impairment is reasonably certain to continue throughout the life of the disabled person. The permanent loss or loss of use of both hands, or of both feet, or of one hand and one foot, or of the sight of both eyes, or becoming permanently helpless or bedridden constitutes permanent total disability. Diseases and injuries of long standing which are actually totally incapacitating will be regarded as permanently and totally disabling when the probability of permanent improvement under treatment is remote. Permanent total disability ratings may not be granted as a result of any incapacity from acute infectious disease, accident, or injury, unless there is present one of the recognized combinations or permanent loss of use of extremities or sight, or the person is in the strict sense permanently helpless or bedridden, or when it is reasonably certain that a subsidence of the acute or temporary symptoms will be followed by irreducible totality of disability by way of residuals. The age of the disabled person may be considered in determining permanence.*⁷

Benefits at the 100% Rate Due To Individual Unemployability

The bill would extend the property tax exemption to service-connected disabled veterans with a total and permanent disability that entitles them to veterans disability compensation benefits at the 100% rate. This would appear to include veterans whose disability rating was not 100%, but who are entitled to benefits at the 100% rate through a VA determination of individual unemployability (IU).⁸

Under a determination of individual unemployability (IU), disabled veterans meeting certain criteria are eligible to receive disability compensation benefits at the 100% rating level, even though their actual disability rating is not 100%. VA regulations provide that in IU rating may be made when it is determined that the disabled veteran is unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities. The veteran must also have at least one disability rated at 60%, or two or more service-connected disabilities with at least one rated at 40% and combined rating of at least 70%.⁹

Veterans may also have an IU rating, even if they do not meet the above ratings requirements, through an extraschedular evaluation. This extraschedular evaluation permits the veteran to receive a higher compensation level than the rating schedule allows due to "[a] finding that the case presents such an exceptional or unusual disability picture with such related factors as marked interference with employment or frequent periods of hospitalization as to render impractical the application of the regular schedular standards."¹⁰ A 2005 report by the VA Office of Inspector General reported that, in FY 2004, 7% of Michigan veterans receiving disability compensation were rated for IU.¹¹

⁷ 38 CFR 3.340.

⁸ http://www.benefits.va.gov/compensation/claims-special-individual_unemployability.asp

⁹ 38 CFR 4.16.

¹⁰ 38 CFR 3.321.

¹¹ Department of Veterans Affairs, Office of Inspector General, *Review of State Variances in VA Disability Compensation Payments*, Report No. 05-00765-137, May 19, 2005, <http://www.va.gov/oig/52/reports/2005/VAOIG-05-00765-137.pdf>.

FISCAL IMPACT:

To the extent that the expanded exemption is claimed, revenue from the State Education Tax (which is earmarked to the School Aid Fund) and local property tax would decline. However, without knowing the number of veterans that would qualify and the corresponding taxable values of their homesteads, an accurate fiscal impact cannot be determined.

Purely as an example, if 5,000 exemptions are claimed, the taxable value of each homestead averages \$50,000, and the statewide average millage rate is 40 mills, the overall revenue loss would be \$10.0 million. To the extent that the number of exemptions, the taxable values, and the specific millage rates vary, the overall fiscal impact would change as well.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.