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FISCAL IMPACT REPORT

ORIGINAL DATE 2/10/15
 LAST UPDATED 3/2/15 HB _____

SPONSOR Sanchez, M.

SHORT TITLE Disabled Veteran Benefit Assessments SB 248/aSPAC

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17	FY18	FY19		
	**	**	**	**	Recurring	Special Benefit District Bonds and operating levies

(Parenthesis () indicate revenue decreases

** The fiscal impact of this bill is relatively minor for the beneficiary special benefit districts. See discussion below.

Implementing the provisions of this bill may cause some difficulty for Counties whose assessors do not have access to Computerized Mass Appraisal computer programs. However, the provisions of the bill are applicable for the 2016 tax year.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department, Property Tax Division (TRD/PTD)

SUMMARY

Synopsis of Amendment

The Senate Public Affairs Committee amendment adds a third restriction on the transferability of the veteran's exemption to the spouse of a deceased veteran: The property of the surviving spouse of a disabled veteran is exempt from the imposition of a special benefit assessment if: (1) the surviving spouse and the disabled veteran were married at the time of the disabled veteran's death; (2) the surviving spouse continues to occupy the property continuously after the disabled veteran's death as the spouse's principal place of residence and [the new restriction] (3) the surviving spouse has remained unmarried since the time of the disabled veteran's death."

Synopsis of Bill

Senate Bill 248 resolves a property tax conflict of some standing. This bill reverses a 1938 NM Supreme Court decision and extends the current property tax exemption for disabled veterans (Section 7-37-5.1 NMSA 1978 of the Property Tax Code) to all impositions of special benefit

assessments outside of the property tax code such as conservancy district assessments, special hospital districts or solid waste districts, as well as voter-approved special benefit assessments imposed on properties specially benefited by the tax. This bill resolves the conflict in favor of the disabled veterans. This provision applies to property owned by a disabled veteran, including joint or community property of the veteran and the veteran's spouse, which is to be exempt from the imposition of a special benefit assessment if the property is occupied by the disabled veteran as the veteran's principal place of residence.

The effective date of the act is not stated – assume 90 days after adjournment or June 19, 2015.

The bill is applicable for the 2016 property tax year.

FISCAL IMPLICATIONS

There may be some shifting of property tax obligations between fully disabled veterans and other taxpayers. In some cases, the bill's provisions would entail a small increase in the rates for special benefits districts, such as conservancy districts, to compensate for the reduction in tax base caused by excluding fully disabled veterans. Counties with imposed maximum operating rates (Section 7-37-7 NMSA 1978), those rates limited by the yield control statute (Section 7-37-7.1 NMSA 1978) and voter approved millage rates won't be able to adjust.

This bill may be counter to the LFC tax policy principles of adequacy, efficiency, accountability and equity. Due to the increasing cost of tax expenditures revenues may be insufficient to cover growing recurring appropriations. However, this bill extends a perceived equity from the regular property tax provisions to the provisions affecting special benefit districts.

SIGNIFICANT ISSUES

TRD/PTD notes that, “the provisions of this bill appear to be a useful clarification of existing statute and the constitutional amendment (Article VIII Section 15). It will help to promote uniform application of the property tax code across all of New Mexico's thirty-three counties. The proposed legislation does no harm and helps both tax administrators and fully disabled veterans. [We] agree with the precept that exempt value shouldn't result in a tax obligation. This legislation should alleviate confusion regarding the implementation of rates authorized outside the property tax code.”

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is not met since TRD is not required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

ADMINISTRATIVE IMPLICATIONS

TRD/PTD notes as follows:

Because the applicability date of this bill is for the next tax year, the administrative impact of this proposal will be relatively minor for counties with advanced Computer Assisted Mass Appraisal

systems. Assessors and Treasurers with advanced systems could accommodate this change with ease. Counties with less advanced computers may have more difficulty implementing the shift and will likely spend considerable time in quality control.”

LFC staff note that it is doubtful that county assessors could accommodate this change for the 2015 tax year. January 1 is the valuation or property tax lien date (Section 7-38-7 NMSA 1978). April 1 (Section 7-38-20 NMSA 1978) is the date by which County Assessors are required to mail their Notices of Value to their taxpayers. However, passing this legislation may cause an increase in property tax protests filed this spring of 2015 by 100 percent disabled veterans affected by a special district levy.

“The Property Tax Division would welcome this legislation largely because we currently enforce delinquent conservancy district property tax collections against fully disabled veterans and this practice would be discontinued if the bill became law.”

TRD/PTD also notes that the Property Tax Code Regulation – NMAC 3.3.6.13 – will have to be amended by deleting the final sentence of Subsection A.

OTHER SUBSTANTIVE ISSUES

TRD/PTD notes that there is a conflict between the regulation 3.6.6.13 NMSA in the Property Tax Code and the attached 2008 letter from the New Mexico Attorney General’s Office. In regulation, 3.6.6.13 NMAC deals with property taxes authorized by laws outside the property tax code and special benefit assessments. It enumerates the property taxes outside the property tax code to which the Disabled Veteran Exemption applies. This includes flood control districts and even college and hospital districts which are subject to voter approved millage rates. The last sentence in Part A specifies that conservancy districts are to be treated differently from flood control districts and voter approved millage rates. That sentence states: “The disabled veteran exemption is not effective against impositions of special benefits assessments authorized by laws outside the Property Tax Code, such as conservancy district assessments.”

The Attorney General, state government’s lawyer, was clear in the April 2, 2008 letter from the New Mexico Attorney General to Representative Thomas Garcia. That letter states:

“Under Section 7-37-7, property taxes authorized by laws outside of the Property Tax Code are imposed on the taxable value of property, as that term is used in the Code, minus any exemption authorized by the Code. Consequently, the disabled veterans exemption authorized under Section 7-37-5.1 effectively applies to property taxes imposed under laws other than the Property Tax Code. This makes it unnecessary for the state legislature to enact a separate disabled veteran exemption for each property tax authorized by those other laws.”

Both the 2008 AGO letter and the regulation 3.6.6.13 NMAC are appended.

LG/bb/je/aml

A.G. Letter:



Attorney General of New Mexico

GARY KING

Attorney General

ALBERT J. LAMA

Chief Deputy Attorney General

April 2, 2008

The Honorable Thomas A. Garcia

New Mexico State Representative

P.O. Box 56

Ocate, NM 87734

Re: Opinion Request- Property Tax Exemption for Veterans with a Disability Dear Representative Garcia:

You asked whether Article VIII, Section 15 of the New Mexico Constitution, which exempts from taxation the property of veterans with a one hundred percent disability, requires the legislature to enact a law implementing the exemption for each tax imposed against property. According to your request, the only existing statutory provision implementing the constitutional exemption applies to property taxes covered by the Property Tax Code, NMSA 1978, ch. 7, arts. 35-38. As a result, you are concerned that specific legislation is required to exempt the property of veterans with disabilities from property taxes imposed by governmental entities such as flood control districts, county hospital districts, college districts, conservancy districts and solid waste districts.

As discussed below, the constitutional exemption implemented by Section 7-37-5.1 of the Property Tax Code effectively applies to all property taxes in the constitutional sense regardless of whether the taxes are imposed under or outside the Property Tax Code. This makes it unnecessary to enact a separate exemption for veterans with a one hundred percent disability for each property tax.

The New Mexico Constitution's provisions governing taxation generally are found in Article VIII, Section 15 provides, in pertinent part:

The legislature shall exempt from taxation the property ... of every veteran of the armed forces of the United States who has been determined pursuant to federal law to have a one hundred percent permanent and total service-connected disability, if the veteran occupies the property as his principal place of residence.

The legislature has enacted the exemption, referred to as the "disabled veteran exemption," as part of the Property Tax Code. See NMSA 1978, § 7-37-5.1 (2004).

Initially, it is important to note that the exemption from property taxation for veterans with disabilities, like all constitutional limitations on and exemptions from taxation, applies only to "taxes" as that term is used in the constitution. The New Mexico Supreme Court has held that the limitations and exemptions specified in Article VIII of

the state constitution do not apply to "special benefit assessments" for improvements that are levied upon property that is specially benefited by the improvements. See *Hamilton v. Arch Hurley Conservancy Dist.*, 42 N.M. 86, 75 P.2d 707 (1938) (preliminary fund assessment by conservancy district was not subject to 20- mill limit under Article VIII, Section 2 for taxes levied upon property); *Lake Arthur Drainage Dist. v. Field*, 27 N.M. 183, 199 P. 112 (1921) (drainage district's assessment of property for improvements in proportion to benefits was not a tax for purposes of exemption from tax for state property under Article VIII, Section 3). Special benefit assessments that are not "property taxes" in the constitutional sense include assessments levied by conservancy districts under the Conservancy Act, ch. 73, art. 16 (1927, as amended through 1983) and the Conservancy District- Reclamation Contract Act, 73-18-1 to -24 (1939, as amended through 1995). Because the constitutional tax exemptions, including the exemption under Article VIII, Section 15 for veterans with disabilities, do not apply to special benefit assessments, the legislature would have to enact specific legislation to exempt property from the assessments. See N .M. Att'y Gen. Op. No. 87-7 (absent a specific statutory exemption, state was required to pay levies assessed on state property within a conservancy district).

We can now address the applicability of the disabled veterans exemption to property taxes imposed by laws other than the Property Tax Code. Chapter 7, Article 37 of the Property Tax Code governs the imposition of the property tax. Most of the provisions of Article 37 do not apply to "impositions or levies of taxes on specific classes of property authorized by laws outside of the Property Tax Code...." NMSA 1978, § 7-37-1(A) {1986}. The exceptions are provisions that authorize and limit tax rates, which are set by the Department of Finance and Administration. See *id.*; NMSA 1978, §§ 7-37-7 {2004}, 7-37-7.1 (1994).

In particular, Section 7-37-7{C) authorizes, in pertinent part:

- (1) those rates or impositions authorized under provisions of law outside of the Property Tax Code that are for the use of the governmental units indicated in those provisions and are for the stated purpose of paying principal and interest on a public general obligation debt incurred under those provisions of law;
- (2) those rates or impositions authorized under provisions of law outside the Property Tax Code that are for the use of the governmental units indicated in those provisions, are for the stated purposes authorized by those provisions and have been approved by the voters of the governmental unit in the manner required by law 1

The rates and impositions described above "shall be on the net taxable value of both residential and nonresidential property allocated to the unit of government specified in the provisions of the other laws!" NMSA 1978, § 7-37-7(0). "Net taxable value" is the value of property upon which the tax is imposed and is determined by deducting from taxable value the amount of any exemption authorized by the Property Tax Code." NMSA 1978, § 7-35-2 (E) (1994).

Under Section 7-37-7, property taxes authorized by laws outside of the Property Tax Code are imposed on the taxable value of property, as that term is used in the Code, minus any exemption authorized by the Code. Consequently, the disabled veterans exemption authorized under Section 7-37-5.1 effectively applies to property taxes imposed under laws other than the Property Tax Code. This makes it unnecessary for the state legislature to enact a separate disabled veterans exemption for each property tax authorized by those other laws.

If we may be of further assistance, please let us know. Your request to us was for a formal Attorney General's Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Sincerely,

ELIZABETH A. GLENN

Assistant Attorney General

cc: Albert J. Lama, Chief Deputy Attorney General

1 Examples of property taxes authorized outside of the Property Tax Code to which the disabled veterans exemption applies are the ad valorem tax on taxable property within a special hospital district, NMSA 1978, § 4-48A-16 (1987); the property tax on taxable property within a college district, NMSA 1978, § 21-2A-5 (1995); the property tax on all property subject to taxation within a flood control district, NMSA 1978, § 72-18-20 (1986); and the general ad valorem tax on all property subject to property taxation within a solid waste authority, NMSA 1978, § 74-10-27 (1993).

3.6.6.13 DISABLED VETERAN EXEMPTION

A. PROPERTY TAXES AUTHORIZED BY LAWS OUTSIDE THE PROPERTY TAX CODE AND SPECIAL BENEFIT ASSESSMENTS. The disabled veteran exemption applies to property taxes imposed by laws other than the Property Tax Code, such as the ad valorem tax on taxable property within a hospital district Section 4-48A-16 NMSA 1978 (1987); the property tax on taxable property within a college district Section 21-2A-5 NMSA 1978 (1995); the property tax on all property subject to taxation within a flood control district Section 72-18-20 NMSA 1978 (1986); and, the general ad valorem tax on all property subject to taxation within a solid waste authority Section 74-10-27 NMSA 1978 (1993). The disabled veteran exemption is not effective against impositions of special benefit assessments authorized by laws outside the Property Tax Code, such as conservancy district assessments.

B. RESIDENCY. Section 7-37-5.1 NMSA 1978 requires that the property for which the exemption is claimed must be occupied by the disabled veteran (or the disabled veteran’s surviving spouse) as his or her principal place of residence. Therefore, a person claiming the disabled veteran exemption must be a current New Mexico resident to qualify for the exemption.

C. SURVIVING SPOUSE.

(1) A surviving spouse of a disabled veteran may apply for the exemption even if the disabled veteran did not apply for the exemption during his or her lifetime if the surviving spouse meets the requirements of Subsection C of Section 7-37-5.1 NMSA 1978.

(2) After the disabled veteran’s death, his or her resident unmarried surviving spouse is entitled to the disabled veteran exemption if he or she continuously occupies the property, on which the disabled veteran exemption was claimed, as the surviving spouse’s principal place of residence.

(3) If a disabled veteran’s surviving spouse remarries and thereafter obtains an annulment of the marriage or a divorce from the subsequent spouse, he or she does not revert to the status of an unmarried surviving spouse entitled to claim the disabled veteran exemption.

(4) An unmarried surviving spouse of a disabled veteran who at the time of the disabled veteran’s death was legally separated from the veteran is entitled to the disabled veteran exemption.

D. CONTINUOUSLY OCCUPIES PRINCIPAL PLACE OF RESIDENCE. Subsection B of Section 7-37-5.1 NMSA 1978 provides for an exemption from property tax of a disabled veteran’s principal place of residence when it is occupied by the disabled veteran. Subsection C of Section 7-37-5.1 NMSA 1978 allows the surviving spouse of a disabled veteran to claim the exemption if the surviving spouse continues to occupy the property continuously as the surviving spouse’s principal place of residence. “Principal place of residence” means the dwelling owned and occupied by the disabled veteran and so much of the land surrounding it, not to exceed five acres, as is reasonably necessary for use of the dwelling as a home and may consist of a part of a multi-dwelling or a multipurpose building and a part of the land upon which it is built. “Occupy the property continuously” means that the individual is physically present in the residence for a total of 185 days or more in aggregate during the prior year and is domiciled in New Mexico as of January 1 of the property tax year for which the exemption is claimed. The definition of “domicile” in Subsections C and D of 3.3.1.9 NMAC is incorporated herein by reference.

[3.6.6.13 NMAC - N, 9/15/09]