

PROPERTY, REAL - Surviving spouse's entitlement to property tax exemption;

TAXATION AND REVENUE - Surviving spouse's entitlement to property tax exemption;

VETERANS - Surviving spouse's entitlement to property tax exemption;

MONTANA CODE ANNOTATED - Section 15-6-211.

- HELD: 1. A surviving spouse's entitlement to the property tax exemption under section 15-6-211, MCA, terminates upon remarriage and is not reinstated upon conclusion of the second marriage.
2. A surviving spouse's entitlement to the property tax exemption under section 15-6-211, MCA, applies only to the residence as to which the veteran was granted the exemption immediately prior to death.

3. A condition of a surviving spouse's entitlement to the property tax exemption under section 15-6-211, MCA, is a determination that the veteran was 100 percent disabled due to a service-connected disability prior to death and was otherwise eligible for the exemption.

26 November 1986

Major General James W. Duffy
The Adjutant General
Department of Military Affairs
P.O. Box 4789
Helena MT 59604-4789

Dear General Duffy:

You have requested my opinion concerning three questions:

1. Is the surviving spouse of a deceased veteran entitled to reinstatement of the property tax exemption under section 15-6-211, MCA, upon termination of a subsequent marriage?
2. Is the surviving spouse of a deceased veteran entitled to the property tax exemption under section 15-6-211, MCA, as to a residence other than that to which the exemption applied at the time of the veteran's death?
3. Is the surviving spouse of a veteran entitled to the property tax exemption under section 15-6-211, MCA, when such veteran dies of a service-related disability but, prior to death, was not rated 100 percent disabled due to that disability?

Based on the unambiguous language of section 15-6-211, MCA, I must answer each question negatively.

Section 15-6-211, MCA, states:

- (1) A residence, including the lot on which it is built, owned and occupied by a disabled

veteran is exempt from property taxation under the following conditions. The owner must:

(a) have been honorably discharged from active service in any branch of the armed services;

(b) be rated 100% disabled due to a service-connected disability by the United States veterans administration or its successor; and

(c) have an annual adjusted gross income, as reported on the latest federal income tax return, of not more than \$15,000 for a single person and \$18,000 for a married couple.

(2) If a veteran whose property has been eligible for this exemption dies, the property shall continue to be exempt so long as the surviving spouse:

(a) remains unmarried;

(b) is the owner and occupant of the house; and

(c) has an annual adjusted gross income, as reported on the latest federal income tax return, of not more than \$15,000.

The property tax exemption provided above is purely a state-granted right and is not required by federal statute.

The entitlement of a surviving spouse to the exemption must be measured against the literal language of section 15-6-211(2), MCA. The first entitlement condition is that the spouse remain unmarried. Consequently, upon remarriage the exemption is forfeited, and no provision is made for reacquisition upon termination of the second marriage. I recognize that 38 U.S.C. § 103 permits the widow of a deceased veteran to receive surviving spouse benefits upon conclusion of a remarriage, but the federal statute is inapplicable here. Again, the exemption is granted as a matter of state law, and entitlement to it must be decided with reference to the legislation creating that right.

Equally clear is that the surviving spouse exemption applies only to the residence as to which the exemption

operated at the time of the veteran's death. The words "the house" in subsection (2)(b) can thus be fairly read only as relating back to the residence subject to the exemption under subsection (1) and not to homes acquired after the veteran's death. Whether such a limitation is equitable or prudent is an issue for the Legislature to resolve.

Finally, section 15-6-211(2), MCA, unquestionably requires the veteran to have been entitled to the exemption before death as a condition of the surviving spouse's entitlement. The veteran must therefore have been rated 100 percent disabled due to a service-connected disability prior to death before the surviving spouse may qualify for the exemption. Simply put, the surviving spouse's entitlement is derivative and arises only if the veteran was entitled to it during his or her lifetime.

THEREFORE, IT IS MY OPINION:

1. A surviving spouse's entitlement to the property tax exemption under section 15-6-211, MCA, terminates upon remarriage and is not reinstated upon conclusion of the second marriage.
2. A surviving spouse's entitlement to the property tax exemption under section 15-6-211, MCA, applies only to the residence as to which the veteran was granted the exemption immediately prior to death.
3. A condition of a surviving spouse's entitlement to the property tax exemption under section 15-6-211, MCA, is a determination that the veteran was 100 percent disabled due to a service-connected disability prior to death and was otherwise eligible for the exemption.

Very truly yours,

MIKE GREELY
Attorney General