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MEMORANDUM FOR Brigadier General Scott D. Wagner, Deputy Adjutant General for
Veterans' Affairs

SUBJECT: Eligibility for Disabled Veterans' Real Estate Tax Exemption Program for
Veterans Rated 100% Disabled for Individual Unemployability

You have requested that I review the question of whether a veteran whose disability is rated 100% or total by the U.S. Veterans' Administration as a result of individual unemployability qualifies for the Disabled Veterans' Real Estate Tax Exemption Program. For the reasons stated in this memorandum, I conclude that the veteran is eligible for the program if he or she meets the other eligibility criteria.

The starting point for review of issues related to the real estate tax exemption program is the Constitutional provision that established the program. Article 8, Section 2(c) of the Pennsylvania Constitution provides:

(c) Citizens and residents of this Commonwealth, who served in any war or armed conflict in which the United States was engaged and were honorably discharged or released under honorable circumstances from active service, shall be exempt from the payment of all real property taxes upon the residence occupied by the said citizens and residents of this Commonwealth imposed by the Commonwealth of Pennsylvania or any of its political subdivisions if, as a result of military service, they are blind, paraplegic or double or quadruple amputees or **have a service-connected disability declared by the United States Veterans Administration or its successor to be a total or 100% permanent disability**, and if the State Veterans' Commission determines that such persons are in need of the tax exemptions granted herein. This exemption shall be extended to the unmarried surviving spouse upon the death of an eligible veteran, provided that the State Veterans' Commission determines that such person is in need of the exemption. (Emphasis added).¹

¹ This provision was added to the state constitution in 1961. It was amended in 1977 to extend the exemption to disabled veterans with a 100% or total service-connected disability. It was amended again in 1985 to extend the exemption to the unmarried surviving spouse of an eligible veteran.

These eligibility criteria are echoed in the Pennsylvania statute that implements the Constitutional provision (51 Pa.C.S. § 8902).² It provides, in pertinent part, that:

Any citizen or resident of this Commonwealth shall be exempt from the payment of all real estate taxes levied upon any building, including the land upon which it stands, occupied by that person as a principal dwelling, if all of the following requirements are met:

- (1) That person has been honorably discharged or released under honorable circumstances from the armed forces of the United States for service in any war or armed conflict in which this nation was engaged.
- (2) As a result of such military service, that person is blind or paraplegic or has sustained the loss of two or more limbs, or has a service-connected disability declared by the United States Veterans' Administration or its successors to be a total or 100% permanent disability.
- (3) The dwelling is owned by that person solely or as an estate by the entirety.
- (4) The need for the exemption from the payment of real estate taxes has been determined by the State Veterans' Commission.

Except for the determination of need, which is vested in the State Veterans' Commission, local boards for the assessment or revision of taxes, or similar local boards, are authorized to make final determinations of whether applicants meets the other eligibility criteria. 51 Pa.C.S. § 8903. However, as a matter of long-standing practice, local boards seek guidance from, and defer to, DMVA with regard to the military service and disability status criteria. Following standard guidance with respect to military service and veterans' disability-related issues promotes consistency in the program and ensures that similarly-situated disabled veterans across the Commonwealth are treated in the same way.

A disabled veteran can receive a 100% (total) service-connected disability rating from the U.S. Department of Veterans Affairs (VA) in two ways. The veteran may suffer from one or more service-connected conditions that rate a 100% disability when calculated and rated under a "schedular rating" based on VA regulations. In addition, a veteran whose schedular rating is less than 100%, may receive a 100% (total) disability rating based on individual unemployability. The VA refers to this as a TDIU (total disability for individual unemployability) rating. Once the veteran has a 100% disability rating (whether through a schedular rating or a TDIU rating), he or she is considered to be totally (100%) disabled by the VA.

The VA regulation on total disability ratings for compensation based on unemployability of the individual is set forth at 38 CFR § 4.16. It provides:

² Substantially the same wording appears in 43 Pa. Code § 5.23 (related to eligibility criteria).

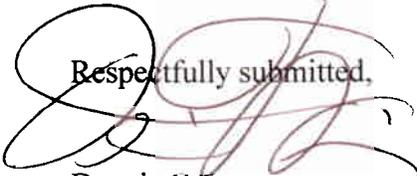
(a) Total disability ratings for compensation may be assigned, where the schedular rating is less than total, when the disabled person is, in the judgment of the rating agency, unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities: Provided That, if there is only one such disability, this disability shall be ratable at 60 percent or more, and that, if there are two or more disabilities, there shall be at least one disability ratable at 40 percent or more, and sufficient additional disability to bring the combined rating to 70 percent or more. . . .

* * *

(b) It is the established policy of the Department of Veterans Affairs 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. Therefore, rating boards should submit to the Director, Compensation and Pension Service, for extra-schedular consideration all cases of veterans who are unemployable by reason of service-connected disabilities, but who fail to meet the percentage standards set forth in paragraph (a) of this section. The rating board will include a full statement as to the veteran's service-connected disabilities, employment history, educational and vocational attainment and all other factors having a bearing on the issue.

There is nothing in the provisions of the Pennsylvania Constitution (Article 8, Section 2(c)), the implementing statute (51 Pa. C. S. Ch. 89) or the DMVA regulations (43 Pa. Code §§ 5.21 – 5.27) that justifies treating a disabled veteran with a 100% (total) disability determined by the U.S. VA any differently based on whether the disability results from a schedular rating or a determination of total disability based on individual unemployability (TDIU). Both ratings are 100%, and they meet the Constitutional and statutory definitions. Both ratings are permanent in the sense that they are not temporary disability ratings and remain in effect indefinitely.

Accordingly, it is my opinion, and you are advised, that a disabled veteran, with a service-connected disability declared by the United States Department of Veterans Affairs to be a total or 100% permanent disability, qualifies for the Commonwealth's Disabled Veterans' Real Estate Tax Exemption Program, regardless of whether the 100% disability rating is based on a rating schedule or a total disability resulting from individual unemployability.

Respectfully submitted,

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