

DEPARTMENT OF TAXATION

2012 Fiscal Impact Statement

1. **Patron** Linda T. Puller
David W. Marsden
3. **Committee** Senate Finance

2. **Bill Number** SB 540

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

4. **Title** Real Property Tax; Rules for Disabled
Veterans Exemption

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would provide that the real property tax exemption for disabled veterans also applies to 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 under which the veteran or the veteran and his spouse hold the power of revocation, and iii) held in an irrevocable trust under which the 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. If one or more other persons have an ownership interest in such property that permits them to occupy the property, the tax exemption would be prorated based on the percentage of persons having an ownership interest who qualify for the exemption. For real property of a disabled veteran that is jointly owned by two or more individuals, but not held in one of those three ways, the exemption would be prorated based on the percentage of ownership interest held by those persons qualifying for the exemption.

The bill would also provide that any real property taxes paid for tax years beginning January 1, 2011, on real property held in trust under the provisions of the bill would be refunded by the locality to the taxpayer.

This bill would be declarative of existing law.

6. **Budget amendment necessary:** No.

7. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

8. **Fiscal implications:**

This bill would have no impact on state revenues. To the extent that qualifying real property, such as real property held by a 100 percent disabled veteran in trust, is located within a locality, the bill would result in a revenue loss to the locality, the magnitude of which is unknown.

9. Specific agency or political subdivisions affected:

All localities

10. Technical amendment necessary: No.

11. Other comments:

Constitutional Amendment

Article XII of the *Constitution of Virginia* sets forth the process for constitutional amendments to take effect in Virginia. An amendment is proposed in the Senate or House of Delegates. The proposed amendment must be agreed upon by a majority of all the members of both the House of Delegates and the Senate in two General Assembly sessions, with an intervening election, and then submitted to voters. If a majority of the voters vote in favor of the amendment, the amendment becomes part of the Constitution on the date prescribed by the General Assembly in submitting the amendment to the voters.

During the 2010 Virginia General Assembly Session, Senate Bill 31 and several companion resolutions were introduced to amend the Constitution to provide that the General Assembly by general law shall exempt from the real property tax the principal residence of any veteran who has been determined to have a 100% service-connected permanent and total disability. Senate Bill 31 provided that, upon receiving the required number of votes at the November 2010 election, the constitutional amendment would take effect on January 1, 2011. As the amendment required the General Assembly to provide the exemption by general law, legislation was required to be enacted in the 2011 General Assembly Session for the exemption to apply.

House Bill 1645 and Senate Bill 987

House Bill 1645 and Senate Bill 987 (*Acts of Assembly 2011*, Chapters 769 and 840) provided the necessary statutory authorization to exempt from taxation, for tax years beginning on or after January 1, 2011, real property that is the principal residence of a veteran (or widow or widower of a veteran) if the veteran has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a 100 percent service-connected, permanent, and total disability. In addition, the land, not to exceed one acre, upon which the dwelling is situated, is also exempt from taxation. However, if the locality provides for an exemption or deferral of real property taxes of more than one acre for the elderly and handicapped, the locality must also provide an exemption of the same number of acres for veterans and surviving spouses. The surviving spouse of a veteran is eligible 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.

The veteran or surviving spouse claiming the exemption must file with the commissioner of the revenue in which the property is located, on forms to be supplied by the locality, an affidavit or written statement setting forth the name of the veteran and spouse, if any,

whether the real property is jointly owned, and certifying that the property is occupied as the veteran's principal place of residence. The veteran must also provide documentation from the U.S. Department of Veterans Affairs or its successor agency pursuant to federal law indicating that the veteran has a 100 percent combat-related, permanent, and total disability.

Opinion of the Attorney General

On July 15, 2011, the Attorney General held, in Opinion No. 11-061, that the real property tax exemption for disabled veterans afforded pursuant to Article X, § 6-A of the *Constitution of Virginia* was 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 others apart from the spouse; or iii) an irrevocable trust. This is consistent with prior opinions of the Attorney General regarding the real property tax exemption for the elderly and disabled. The Attorney General stated that in light of the rule of strict construction for property tax exemptions, any ambiguity regarding whether property held in trust qualifies for the exemption would be resolved against eligibility.

Proposal

This bill would provide that the real property tax exemption for disabled veterans and their surviving spouses also applies to 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 under which the veteran or the veteran and his spouse hold the power of revocation, and iii) held in an irrevocable trust under which the 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. If one or more other persons have an ownership interest in such property that permits them to occupy the property, the tax exemption would be prorated based on the percentage of persons having an ownership interest who qualify for the exemption. For real property of a disabled veteran that is jointly owned by two or more individuals, but not held in one of those three ways, the exemption would be prorated based on the percentage of ownership interest held by those persons qualifying for the exemption.

The bill would also provide that any real property taxes paid for tax years beginning January 1, 2011, on real property held in trust under the provisions of the bill would be refunded by the locality to the taxpayer.

This bill would be declarative of existing law.

Similar Legislation

House Bill 922 and **Senate Bill 529** are identical to this bill.

House Bill 190 would require the Commissioner of the Department of Veterans Services to promulgate rules and regulations governing the administration and implementation of the real property tax exemption for disabled veterans.

House Bill 933 would provide that the real property tax exemption for disabled veterans for qualifying property acquired after January 1, 2011 shall begin on the date the property is acquired.

Senate Bill 22 would clarify that the real property tax exemption begins on the date of the rating for veterans rated after January 1, 2011 by the United States Department of Veterans Affairs or its successor agency pursuant to federal law as having a 100 percent service-connected, permanent, and total disability.

cc : Secretary of Finance

Date: 1/20/2012 AM
DLAS File Name: SB540F161