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OPINION COMMITTEE

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October 6, 2011

The Honorable Greg Abbott
Attorney General of Texas
209 W. 14th Street
Austin, Texas 78701

Dear General Abbott:

As chair of the House Defense and Veterans' Affairs Committee, I ask for your opinion regarding the following questions:

1. Assuming that the constitutional amendment proposed by S.J.R. No. 14, 82nd Legislature, Regular Session, 2011, is approved by the voters, would the surviving spouse of a disabled veteran who died before January 1, 2012, and who qualified for an exemption under Section 11.131(b), Tax Code, at the time of death qualify in 2012 and subsequent tax years for the exemption authorized by that constitutional amendment if the spouse otherwise meets the requirements for the exemption?

2. If a disabled veteran who qualified for an exemption under Section 11.131(b), Tax Code, in the 2011 tax year dies during that tax year, would the exemption continue in effect for the remainder of that tax year or would the exemption be prorated?

Section 1-b(i), Article VIII, Texas Constitution, authorizes the legislature by general law to exempt from ad valorem taxation all or part of the market value of the residence homestead of a disabled veteran who is certified as having a service-connected disability with a disability rating of 100 percent or totally disabled. Section 11.131, Tax Code, is the enabling legislation for that provision. That section provides that a disabled veteran who receives from the United States Department of Veterans Affairs or its successor 100 percent disability compensation due to a service-connected disability and a rating of 100 percent disabled or of individual unemployability is entitled to an exemption from ad valorem taxation of the total appraised value of the veteran's residence homestead.

S.J.R. No. 14, 82nd Legislature, Regular Session, 2011, proposes to amend Section 1-b, Article VIII, Texas Constitution, by adding Subsections (j) and (k). Subsection (j) authorizes the legislature by general law to provide that the surviving spouse of a 100 percent or totally disabled veteran who qualified for an exemption in accordance with Subsection (i) of that section from ad valorem taxation of all or part of the market value of the disabled veteran's residence

homestead when the disabled veteran died is entitled to an exemption from ad valorem taxation of the same portion of the market value of the same property to which the disabled veteran's exemption applied if the surviving spouse has not remarried since the death of the disabled veteran, the property was the residence homestead of the surviving spouse when the disabled veteran died, and the property remains the residence homestead of the surviving spouse. Subsection (k) of that section authorizes the legislature by general law to provide that a surviving spouse who qualifies for an exemption in accordance with Subsection (j) of that section may transfer the exemption to a subsequently qualified homestead if the surviving spouse meets certain requirements. S.J.R. No. 14 provides that Sections 1-b(j) and (k), Article VIII, Texas Constitution, take effect January 1, 2012, and apply only to a tax year beginning on or after that date.

Chapter 1222 (S.B. No. 516), Acts of the 82nd Legislature, Regular Session, 2011, is the enabling legislation for the constitutional amendment proposed by S.J.R. No. 14. The act amends Section 11.131, Tax Code, by adding Subsections (c) and (d). Subsection (c) provides that the surviving spouse of a disabled veteran who qualified for an exemption under Subsection (b) when the disabled veteran died is entitled to an exemption from ad valorem taxation of the total appraised value of the same property to which the disabled veteran's exemption applied if the surviving spouse has not remarried since the death of the disabled veteran, the property was the residence homestead of the surviving spouse when the disabled veteran died, and the property remains the residence homestead of the surviving spouse. Subsection (d) authorizes a surviving spouse who qualifies for an exemption under Subsection (c) to transfer the exemption to a subsequently qualified property in certain circumstances. The act provides that Section 11.131, Tax Code, as amended by the act, applies only to a tax year beginning on or after January 1, 2012, and that the act takes effect January 1, 2012, but only if the proposed constitutional amendment is approved by the voters.

While the transitional provisions of S.J.R. No. 14 and S.B. No. 516 provide that the amendments to the constitution and the Tax Code made by those enactments take effect January 1, 2012, and apply only to tax years beginning on or after that date, they do not expressly require that a disabled veteran have died on or after January 1, 2012, for the surviving spouse of the disabled veteran to receive a residence homestead exemption under Section 11.131, Tax Code, for the 2012 tax year or a subsequent tax year. Nevertheless, it has been argued that a disabled veteran must have died on or after that date for the disabled veteran's surviving spouse to be eligible for the exemption. Is it clear that the surviving spouse of a disabled veteran who received a residence homestead exemption under Section 11.131, Tax Code, would be eligible for the exemption if the disabled veteran died before January 1, 2012, or would the law need to be clarified if that were the legislative intent?

Section 11.42, Tax Code, provides that, in general, eligibility for and the amount of an exemption authorized by Chapter 11 of that code for any tax year are determined by a claimant's qualifications on January 1 and that a person who does not qualify for an exemption on January 1 of any year may not receive the exemption that year. Section 26.10, Tax Code, provides for

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prorating certain exemptions if the exemption terminates during the year. However, Subsection (a) of that section does not apply to residence homestead exemptions, and, while Subsection (b) of that section applies in part to a residence homestead exemption for a disabled individual, that subsection applies only to an individual whose exemption terminates during a tax year and who qualifies a different property for a residence homestead exemption for an individual 65 years of age or older or a residence homestead exemption for a disabled individual during the same year. That section does not appear to currently apply to a residence homestead exemption under Section 11.131, Tax Code, that terminates during a tax year because the disabled veteran who received the exemption died.

Chapter 597 (S.B. No. 201), Acts of the 82nd Legislature, Regular Session, 2011, amends Section 11.42, Tax Code, to provide that a person who qualifies for an exemption under Section 11.131 of that code after January 1 of a tax year may receive the exemption for the applicable portion of that tax year immediately on qualification for the exemption. The act also amends Section 26.10, Tax Code, to provide for prorating a residence homestead exemption under Section 11.131 of that code if the appraisal roll shows that the exemption terminated during the year. Finally, the act amends Chapter 26, Tax Code, by adding Section 26.1125, which provides for prorating an exemption under Section 11.131 of that code if a person qualifies for the exemption after the beginning of a tax year. The act takes effect January 1, 2012, and applies only to an ad valorem tax year that begins on or after the effective date of the act.

Under S.B. No. 201, if a disabled veteran who received a residence homestead exemption under Section 11.131, Tax Code, died in 2012 or a subsequent tax year, the exemption applicable to the homestead would be prorated for that year. However, is it clear under current law that if the veteran died in 2011 the exemption would continue in effect for the remainder of the 2011 tax year and would not be prorated?

Thank you in advance for your consideration of this matter. Please do not hesitate to contact me if you need any additional information regarding this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe C. Pickett", written in a cursive style.

Joe C. Pickett
State Representative
Chair, House Defense and
Veterans' Affairs Committee