



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Mark R. Herring
Attorney General

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900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

The Honorable Priscilla S. Bele
Commissioner of the Revenue
City of Newport News
2400 Washington Avenue
Newport News, Virginia 23607

Dear Ms. Bele:

I am responding to your request for an official advisory Opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether the real property tax exemption provided for in Article X, § 6-A(b) of the Virginia Constitution and § 58.1-3219.9 of the *Code of Virginia* applies to the surviving spouses of members of the armed forces killed in action prior to January 1, 2015.

Applicable Law and Discussion

In November 2014, citizens of the Commonwealth approved a constitutional amendment authorizing the General Assembly to provide by general law for a real property tax exemption for the surviving spouses of members of the armed forces who are killed in action.¹ In accord with this amendment, Article X, § 6-A(b) of the Virginia Constitution now provides as follows:

Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, may exempt from taxation the real property of the surviving spouse of any member of the armed forces of the United States who was killed in action as determined by the United States Department of Defense, who occupies the real property as his or her principal place of residence. The exemption under this subdivision shall cease if the surviving spouse remarries and shall not be claimed thereafter. *This exemption applies regardless of whether the spouse was killed in action prior to the effective date of this subdivision, but the exemption shall not be applicable for any period of time prior to the effective date.* This exemption applies to the surviving spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence and without any requirement that the spouse reside in the Commonwealth at the time of death of the member of the armed forces.^{2]}

¹ See VA. DEP'T OF ELECTIONS, *Historical Elections Results – Proposed Amendment to Art. X, § 6-A of the Virginia Constitution*, http://historical.elections.virginia.gov/ballot_questions/view/2754/ (last visited Oct. 21, 2015). See generally VA. CONST. art. XII, § 1 (providing that proposed amendments to the Constitution shall be submitted by the General Assembly to the qualified voters of the Commonwealth).

² Emphasis added.

As written, this provision makes clear that the exemption applies regardless of when the member of the armed forces was killed in action. “If a constitutional provision is plain and unambiguous, [courts] do not construe it, but apply it as written.”³ Moreover, “[i]f the intention is manifest from the language used and leads to no absurd conclusion, courts must give [the provision] the effect clearly intended.”⁴

On January 1, 2015, legislation implementing the tax exemption became effective.⁵ This legislation, which is codified at § 58.1-3219.9, details the exemption and provides in relevant part that:

Pursuant to subdivision (b) of Section 6-A of Article X of the Constitution of Virginia, and for tax years beginning on or after January 1, 2015, the General Assembly hereby exempts from taxation the real property described in subsection B of the surviving spouse (i) of any member of the armed forces of the United States who was killed in action as determined by the United States Department of Defense and (ii) who occupies the real property as his principal place of residence. If such member of the armed forces of the United States is killed in action after January 1, 2015, and the surviving spouse has a qualified principal residence on the date that such member of the armed forces is killed in action, then the exemption for the surviving spouse shall begin on the date that such member . . . is killed in action.⁶

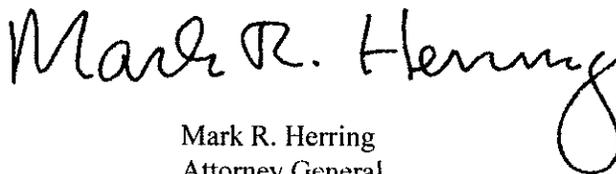
The language of this legislation is consistent with that of the constitutional provision authorizing the exemption.⁷ The significance of “January 1, 2015,” involves only the tax years to which the exemption applies. Nothing in § 58.1-3219.9 serves to bar the exemption based on the date of death of the military member.

Conclusion

Accordingly, it is my opinion that the real property tax exemption provided for in Article X, § 6-A(b) of the Virginia Constitution and § 58.1-3219.9 of the *Code of Virginia* is applicable to the surviving spouses of members of the armed forces who are killed in action at any time prior to, on, or after January 1, 2015, provided all other requirements for the exemption have been met. The exemption applies for tax years beginning on or after January 1, 2015.

With kindest regards, I am

Very truly yours,



Mark R. Herring
Attorney General

³ *Town of Madison v. Ford*, 255 Va. 429, 432 (1998).

⁴ *Hollywood Cemetery Co. v. Commonwealth*, 123 Va. 106, 110-11 (1918).

⁵ See 2014 Va. Acts ch. 757.

⁶ VA. CODE ANN. § 58.1-3219.9 (Supp. 2015) (emphasis added).

⁷ See generally *Terry v. Mazur*, 234 Va. 442, 449-50 (1987) (providing that statutes inconsistent with the Virginia Constitution are invalid).