



INSTRUCTIONS FOR ELIGIBLE FUNDS VETERANS EXEMPTION FROM REAL PROPERTY TAXATION

ELIGIBLE FUNDS VETERANS EXEMPTION FROM REAL PROPERTY TAXES

Section 458 of the Real Property Tax Law provides a partial exemption from real property taxation where property owned by a veteran or certain other persons designated in the law has been purchased with pension, bonus or insurance monies, referred to as "eligible funds". This exemption generally has a \$5,000 maximum and is applicable to general municipal taxes, but not to school taxes or special district charges.

In some municipalities, however, property may be eligible for an exemption in excess of the \$5,000 limitation. If your property is receiving an eligible funds exemption in a municipality which has changed from fractional assessment to full value assessment, and, if that municipality timely adopted a local law preserving the value of eligible funds exemption on a pro rata basis, and that local law remains in effect, your eligible funds exemption will increase or decrease in the same proportion as the total assessed value of the property increased or decreased as a result of the change to full value assessment. Similarly, if your municipal has opted to apply the change in level of assessment to eligible funds exemptions, the amount of exemption will increase or decrease when such change occurs. (For more information concerning local applicability of the pro rata or change in level option, contact your assessor.)

Section 458 also provides a total exemption from general municipal and school taxes to certain seriously disabled veterans who use monies granted by the federal government to acquire specially adapted housing made necessary by the veteran's disability. The unmarried surviving spouse of such a veteran may transfer this exemption to any new housing unit used as his or her primary residence. (For more information concerning the seriously disabled veterans exemption, contact your assessor.)

Section 458-a of the Real Property Tax Law provides an alternative exemption from real property taxation for qualified residential real property owned by certain veterans or other family members, based on a percentage of assessed value. In municipalities which grant the alternative veterans exemption, no new eligible funds veterans exemptions may be granted.

If a veteran elects the alternative exemption, he/she generally cannot again receive an eligible funds exemption unless he/she moves to a county, city, town, or village that has opted not to grant the alternative veterans exemption. Also, if a municipality which grants the alternative exemption adopts a local law to allow veterans, who previously received the eligible funds exemption but who switched to the alternative exemption, to switch back to the eligible funds exemption and receive the change in level of assessment, veterans have one year from the date of the local law to apply to switch back (using form RP-458). For more information concerning the alternative veterans exemption and the appropriate application form (RP-458-a), contact your local assessor.

The following information is intended to assist applicants in the completion of form RP-458 and to discuss issues concerning the veterans exemption. Technical discussion has been avoided so that the material will have the widest possible usefulness. Assessors may address their questions to the Counsel of the State Board of Real Property Services, Sheridan Hollow Plaza, 16 Sheridan Ave., Albany, N.Y. 12210-2714. Veterans should address their inquiries to their local office of the New York State Division of Veterans' Affairs or their County Veterans' Service Agency.

I. THE STATUTE

Subdivision one of section 458 of the Real Property Tax Law provides a partial exemption from real property taxation for real property owned by veterans or other members of the eligible class which is purchased with the proceeds of a veteran's pension, bonus or insurance (or dividends or refunds on such insurance) or compensation paid to prisoners of war. These monies are called "eligible funds" and are paid by the United States or New York State in recognition of the veteran's military service. This section provides an exemption from general municipal taxes, but not school taxes, special ad valorem levies or special assessments. Property is exempt to the extent that eligible funds are used in the purchase. Except where the pro rata or change in level option is in effect, the exemption cannot exceed \$5,000 based upon eligible funds paid on account of military or naval services rendered by an individual veteran. Where property is owned by more than one person entitled to exemption, for example, where property is owned by more than one veteran, their exemptions may be combined. The unmarried surviving spouse of a veteran, who is also a veteran, may also receive the veterans exemption of the deceased spouse.

The questions under this statute fall generally into three categories: First, what is meant by the "purchase" of real property? Second, what are "eligible funds"? Third, who are the persons in the "exempt" class?

II. WHAT IS THE "PURCHASE" OF REAL PROPERTY?

The statute requires the real property be "purchased" with eligible funds. The acquisition of title to real property by the use of such monies is a direct purchase. In addition, various other transactions, such as payments of principal on a mortgage, have also been considered to be a "purchase" of real property.

A. The following are illustrative of a "purchase" where eligible funds are used:

1. Payment of purchase price with (a) a government check for eligible funds or (b) directly with the proceeds of the check for eligible funds.
2. Payment on the principal of a (a) mortgage assumed at the time of the purchase, (b) purchase money mortgage, (c) mortgage where the mortgage money was borrowed to improve the property, or (d) mortgage on real property owned by any person in the "exempt" class.
3. Payment of the cost of improvements (improvements enhance the value of property whereas repairs do not).
4. Acquiring title to real property because of default of the mortgagor where the assignment of the mortgage to the veteran has been paid for with eligible funds.

In each of the above-mentioned cases, the payment must be made with eligible funds.

B. The payment of current or delinquent taxes, interest, insurance or repairs on property, even if made with money borrowed on a mortgage (and even though the mortgage is paid off with eligible funds), does not constitute the "purchase" of real property.

III. WHAT ARE "ELIGIBLE FUNDS"?

A. The following have been held to include eligible funds and hence real property purchased with such funds is entitled to exemption:

1. Monthly payments for a service-connected and a non-service connected disability or death.
2. Retirement pay and disability retirement pay.
3. Severance pay and disability severance pay.
4. A death gratuity or benefit equal to six months' pay.
5. Proceeds of World War adjusted service bonds and interest (Bonus, World War 1).
6. Mustering out pay.
7. Lump sum payment to Army and Navy Air Corps Reserve officers upon release from active duty.
8. Readjustment allowance paid to members of reserve components on involuntary release.
9. Subsistence allowance under "GI Bill of Rights" including such allowance in connection with college and school education and training, on-the-job training, apprentice training and vocational rehabilitation programs. Exemption is limited (a) to the reasonable rental value to the veteran of the necessary dwelling premises which he purchased with subsistence allowance during his schooling or training and which he actually occupied during such period (of course, not exceeding the amount of subsistence allowance actually used in the purchase), or (b) if property is purchased with subsistence allowance after payment is terminated, to an amount (used to purchase real property) equal to the excess, if any, of such allowance over and above the reasonable cost of subsistence. The use of other funds for subsistence does not permit application of unused subsistence allowance as eligible funds under provision (b). Post-World War II veterans do not receive separate subsistence allowances and any portion of education or training benefits not actually used for tuition, books, supplies, fees, etc. is considered a subsistence allowance and is treated in the manner described in this paragraph.

10. The 4% payment made by the government for the first year on the guaranteed portion of a GI loan on real property when used to reduce the principal of the mortgage, not to exceed \$160.
11. (a) Proceeds on maturity or death and (b) cash value on actual surrender of United States Government Life Insurance and National Service Life Insurance.
12. Dividends or refunds on insurance granted by the United States.
13. The amount of money equal to the amount of eligible funds retained by the United States Government for insurance premiums.
14. Proceeds from the sale of real property entitled to exemption used to purchase another parcel of real property or exchange of such real property to the extent of eligible funds used in the original purchase.
15. Bonus granted by New York State or by the United States Government.
16. Annuity to blind veterans granted by New York State.
17. Fleet Reserve Retainer Pay (Naval and Marine Corps).
18. Prisoner of war pay.

B. The following are not considered to be eligible funds and real property purchased with such monies is not entitled the exemption:

1. Government retainer pay.
2. Government bounty or soldier's pay.
3. Government allotment of soldier's pay.
4. National Guard drill pay.
5. Loan on War Risk Insurance Policies or National Service Life Insurance Policies.
6. Ordinary wages paid for military service.
7. Additional pay granted for special service, such as, submarine or paratrooper pay.
8. Dependents' allowance, World War II.
9. Proceeds of a loan not secured by a mortgage used to purchase real property although loan is paid off with eligible funds (where secured by a mortgage see IIA). Items 2(a), (b) and (c).
10. Enlistment allowance and reenlistment bonus.
11. Terminal leave pay (officer) and leave settled and compensated for (enlisted man-commonly called terminal leave pay) or proceeds of bonds thereof.
12. Bonus granted by another state.

Although a veteran may mingle eligible funds with other funds, it is still necessary for him or her to establish to the satisfaction of the assessor that eligible funds were used to purchase real property in order to obtain exemption. Accordingly, it is advisable for a veteran to deposit such monies in a separate bank account in order to readily prove that the real property was purchased with such monies.

IV. PERSONS IN THE "EXEMPT" CLASS

In order to be exempt, the real property must be "owned" by the veteran or by the spouse or unremarried surviving spouse, or dependent father or mother, or by the children under twenty-one years of age of the veteran. Dependency is a question of fact. Primarily, a dependent (father or mother) is one who derives support in whole or part from another. So long as dependency is established, it is immaterial whether the veteran is living or dead. The exemption applies to all persons, male or female, who rendered military or naval services to the United States at any time. Military or naval services for purposes of the exemption also includes service during World War II in the United States Merchant Marine, United States Army Transport Service (ocean-going service), American Field Service (overseas duty), or civilian flight crew or ground support in Pan American World Airways pursuant to its contract with Air or Naval Transport Command. The statute exempts the real property of non-resident veterans as well as resident veterans. The exemption also applies both to vacant and leased property owned by the veteran or others in the "exempt" class.

A veteran, who takes possession of real property which he purchased with eligible funds under an executory contract of sale, is eligible to apply for the exemption. A life tenant who purchased property with eligible funds is also eligible to apply for the exemption. Note that if the property is held in trust, the trustees are the legal owners of the property, but the exemption also may be allowed if the beneficiary of the trust is a person in the exempt class. The trustee-beneficiary relationship should be explained in answering question no. 4 on RP-458, and the remaining questions should be answered on the basis of the beneficiary's qualifications for the exemption. Attach a copy of the trust or other proof of such trustee-beneficiary relationship. At local option, a municipality may grant the exemption to otherwise qualifying owners who are tenant-stockholders of cooperative apartment corporations. The exemption is then applied to that proportion of the assessment as represents the tenant-stockholder's percentage of ownership of stock in the corporation.

V. EXTENT AND METHOD OF OBTAINING EXEMPTION

An application for exemption (RP-458) must be made to the assessor. Do not file the application with the State Board of Real Property Services. Where property is located in a village which assesses, a separate application must be filed with the village assessor. The application must be filed on or before taxable status date. In most towns, the taxable status date is March 1. In Nassau County, taxable status date is January 2. In the counties of Erie and Westchester, taxable status date is June 1. Taxable status date for most villages which assess is January 1. However, the village clerk should be consulted to ensure certainty. Charter provisions control in cities so inquiry should be made of city assessors for the taxable status date in cities. Assessors have no authority to grant applications filed after taxable status date.

A veterans exemption, once granted, may be increased to the statutory maximum provided the veteran can prove that additional eligible funds are put into exempt property, for example, by reducing the principal of a mortgage, or by making improvements to the property. A new application, however, must be made. Exemptions, whether established or newly claimed, must be rounded to the nearest multiple of \$50.00. Where there is no nearest multiple of \$50.00, the amount must be rounded to the next higher multiple of \$50.00. An established exemption and new exemption must be added together before rounding off.

VI. CHANGE IN LEVEL

Counties, cities, towns and villages may adopt local laws providing that eligible funds exemptions are to be recomputed after revaluations and updates. Municipalities which decide to adopt the change in level option also may choose to allow veterans, who previously had received eligible funds exemptions, but who switched to the alternative exemption, to switch back and receive the eligible funds exemption as recomputed with the change in level factor. Veterans have one year from the date of the local law to switch back.

VII. CONCLUSION

To summarize the foregoing briefly, the following are the chief provisions of the statute:

- (1) The property must be purchased with eligible funds.
- (2) The property must be owned by the veteran or the spouse or unremarried surviving spouse or dependent father or mother, or by the children under twenty-one years of age of the veteran.
- (3) An application for exemption must be presented to the assessor.
- (4) The exemption cannot exceed \$5,000 based upon eligible funds paid on account of an individual veterans service except where the pro rata or change in level option is in effect.
- (5) The exemption covers general municipal taxation, but not school taxes or special district charges.