



THE COMMONWEALTH OF MASSACHUSETTS

Appellate Tax Board

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Docket No. X307163

DENISE MIELE
Appellant.

**BOARD OF ASSESSORS OF
THE TOWN OF MIDDLETON**
Appellee.

DECISION WITH FINDINGS

The decision is for the appellant. Abatement is granted in the full amount of the subject assessment as abated, \$3,243.70, pursuant to G.L. c. 59, § 5, Clause 22D ("Clause 22D"). After considering the testimony of the witnesses and the documentary evidence introduced at the hearing of this appeal, the Board makes the following findings of fact and rulings of law.

This is an appeal from the refusal of the assessors to grant an exemption under Clause 22D for property owned and occupied by the appellant at 2 Lakeview Avenue in the Town of Stoneham ("subject property"). The appellant is the surviving spouse of Francis A. Miele, Jr., a veteran who served in the United States Army from September 7, 1965 until his honorable discharge on September 8, 1968 ("Veteran").

While serving a tour of duty in Viet Nam, the Veteran received a blood transfusion that was tainted with the Hepatitis C virus. During the Veteran's lifetime, the Department of Veterans Affairs ("VA") determined that his chronic Hepatitis C disease was "service connected".

The Veteran died on January 29, 2009 at the age of 61. In a Rating Decision dated August 11, 2009, the VA determined that:

Death Certificate, dated January 29, 2009, shows veteran died on that date. Immediate cause of death was liver failure due to liver cirrhosis, due to hepatitis.

Review of evidence contained in veteran's VA claims folder from September 7, 1965 through August 11, 2009, including report from M.D. Curry, M.D., indicates veteran's death was caused by a disease for which veteran was receiving compensation under provisions of 38 U.S. Code 1151.

The cause of death is recorded as: liver failure due to hepatitis. DIC [dependency and indemnity compensation] benefits for the veteran's death are granted since evidence shows that it was related to disability for which veteran was receiving VA compensation.

The appellant applied to the assessors for an exemption under Clause 22D, which exempts from real estate tax:

Real estate to the full amount of the taxable valuation of real property of the surviving spouses of soldiers and sailors and members of the National Guard whose death occurred as a proximate result of an injury sustained or disease contracted in a combat zone . . . if the real estate is occupied by the surviving spouse as a domicile, and if the surviving spouse has been domiciled in the commonwealth for 5 consecutive years next before the date for filing for exemption under this clause.

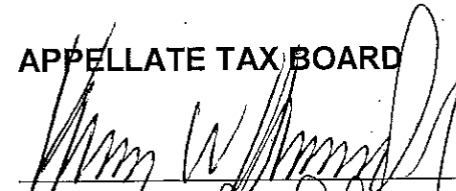
The assessors denied the Clause 22D exemption, but granted a more limited \$1,000 abatement under G.L. c. 59, § 5, Clause 22E (Clause 22E") for surviving spouses of Veteran's who had a VA disability rating of 100 percent during their lifetime. The appellant timely filed her appeal with the Board.


On the basis of the evidence of record, the Board finds and rules that the Veteran's death occurred as a proximate result of a disease contracted in a combat zone and that the appellant satisfies the domicile requirements of Clause 22D. The January 29, 2009 VA Rating Decision could not be more clear: the evidence in the Veteran's claim folder dating from 1965 through 2009, including his death certificate, conclusively showed that the Veteran died from liver failure caused by the hepatitis disease he contracted in Viet Nam.


Where, as here, a veteran dies as a proximate result of a disease or injury contracted in a combat zone, real estate owned and occupied by the veteran's surviving spouse for at least 5 consecutive years is entitled to a full exemption under Clause 22D. See **Keane v. Assessors of Barnstable**, ATB Decision With Findings, Docket No. X306755 (October 13, 2015) and **Cox v. Assessors of Barnstable**, ATB Decision With Findings, Docket No. X306768 (October 13, 2015).

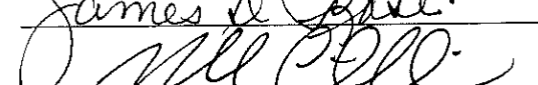
The Board therefore finds and rules that the subject property is exempt from real estate tax under Clause 22D. Accordingly, the decision is for the appellant and an abatement is granted in the amount of \$3,243.70.

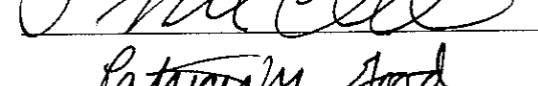
APPELLATE TAX BOARD


Chairman


Commissioner


Commissioner


Commissioner


Commissioner

Attest: 
Clerk of the Board

Date: MAR - 3 2017
(Seal)

NOTICE: Either party to these proceedings may appeal this decision to the Massachusetts Appeals Court by filing a Notice of Appeal with this Board in accordance with the Massachusetts Rules of Appellate Procedure. Pursuant to G.L. c. 58A, § 13, no further findings of fact or report will be issued by the Board