

P.A. 161 of 2013: Disabled Veterans Exemption

Frequently Asked Questions



Prepared by the Michigan State Tax Commission

Approved August 26, 2014

State Tax Commission

P.A. 161 of 2013 Disabled Veteran's Exemption Frequently Asked Questions

Michigan P.A. 161 of 2013 amended MCL 211.7b relating to the exemption for disabled veterans. Specifically this Act changed MCL 211.7b to read as follows:

Sec. 7b. (1) Real property used and owned as a homestead by a disabled veteran who was discharged from the armed forces of the United States under honorable conditions or by an individual described in subsection (2) is exempt from the collection of taxes under this act. To obtain the exemption, an affidavit showing the facts required by this section and a description of the real property shall be filed by the property owner or his or her legal designee with the supervisor or other assessing officer during the period beginning with the tax day for each year and ending at the time of the final adjournment of the local board of review. The affidavit when filed shall be open to inspection. The county treasurer shall cancel taxes subject to collection under this act for any year in which a disabled veteran eligible for the exemption under this section has acquired title to real property exempt under this section. Upon granting the exemption under this section, each local taxing unit shall bear the loss of its portion of the taxes upon which the exemption has been granted.

(2) If a disabled veteran who is otherwise eligible for the exemption under this section dies, either before or after the exemption under this section is granted, the exemption shall remain available to or shall continue for his or her unremarried surviving spouse. The surviving spouse shall comply with the requirements of subsection (1) and shall indicate on the affidavit that he or she is the surviving spouse of a disabled veteran entitled to the exemption under this section. The exemption shall continue as long as the surviving spouse remains unremarried.

(3) As used in this section, "disabled veteran" means a person who is a resident of this state and who meets 1 of the following criteria:

(a) Has been determined by the United States department of veterans affairs to be permanently and totally disabled as a result of military service and entitled to veterans' benefits at the 100% rate.

(b) Has a certificate from the United States veterans' administration, or its successors, certifying that he or she is receiving or has received pecuniary assistance due to disability for specially adapted housing.

(c) Has been rated by the United States department of veterans affairs as individually unemployable.

Board of Review Authority:

The State Tax Commission has determined that the March, July and December Boards of Review have authority to review and grant the Disabled Veterans Exemption. The sentence “during the period beginning with the tax day for each year and ending at the time of the final adjournment of the local board of review” has been interpreted by the State Tax Commission to mean the March, July and December Boards of Review all have authority to grant this exemption.

If the exemption is granted by the July or December Board of Review does it eliminate all the property taxes for that year?

Yes. If the exemption is granted by the December Board of Review then refunds would be issued for the taxes paid in September and no taxes would be due on the property in February of the following year.

What is the authority of the Board of Review in granting an exemption for a prior assessment year?

Generally, the Board of Review only has the authority to grant a Disabled Veteran’s Exemption for the year in which it is meeting. An exception to that is the 2014 July Board of Review may grant an exemption to any veteran or unremarried surviving spouse that met the qualifications of PA 161 of 2013 by the adjournment of the 2013 December Board of Review yet missed filing the required Affidavit and supporting documentation with the local unit by the adjournment date of the 2013 December Board of Review. The 2014 July Board of Review may not review the submission for a PA 161 of 2013 Disabled Veterans Exemption that was denied by the 2013 December Board of Review. Individuals who were denied the exemption at the 2013 December Board of Review must appeal to the Michigan Tax Tribunal.

I escrow my taxes, how do I get my refund?

Taxpayers are advised to contact their mortgage company or bank to discuss this matter.

If the veteran or surviving spouse purchased the home in September, what refund of taxes is he or she eligible to receive?

Disabled veterans or their eligible unremarried surviving spouse who purchased their home mid-year are eligible for a partial refund of the current year’s summer and winter taxes they have paid for that year or an exemption from taxes they will pay for that year. Taxpayers are encouraged to provide the local city or township with a copy of the closing documents from the purchase of their home to assist the local unit in determining their property tax obligations.

Are special assessments eliminated as well?

Special assessments are not considered property taxes. The Act specifically indicates that the property is exempt from the collection of taxes under the General Property Tax Act. Therefore, if an exemption is granted under this Act, a special assessment would not generally be eliminated and would still be required to be paid. However, at least one special assessment statute, Michigan PA 33 of 1951, which is a millage based special assessment and provides funding for police and fire

protection services, specifically provides that exempt properties are not subject to the assessment. If the statute under which the special assessment is levied provides that it does not apply to exempt properties, then such situations would be considered an exception.

Applying for the Exemption:

In order to apply for the exemption, the disabled veteran, their unremarried surviving spouse or their legal designee must **annually** file an affidavit with the local unit. While the Act did not require the development of an official State of Michigan affidavit form, the State Tax Commission in the interest of uniformity and equity, has adopted Form 5107, Affidavit for Disabled Veterans Exemption. The application process requires that the veteran must file both the affidavit and supporting evidence with the local city or township assessor annually. When possible, this submission should be made in the first two months of the assessment year (January or February). If the submission is made later, the veteran or unremarried surviving spouse will receive a tax billing statement and the local unit's administrative costs are increased. Further, if it is determined that the submission is incomplete, the exemption may be jeopardized.

Determining the Property which is Eligible for the Exemption:

Real property owned and used as a homestead by the disabled veteran or his or her unremarried surviving spouse is eligible for the exemption.

What constitutes a Homestead?

A homestead is generally defined as any dwelling with its land and buildings where a family makes its home. A homestead within the meaning of the statute is the primary residence of a Michigan resident or the primary residence of an unremarried surviving spouse who is a Michigan resident. To be a homestead, the residence must be owned by the veteran or unremarried surviving spouse and must be the place where the veteran or the unremarried surviving spouse always intends to return. The claimant who is required to file must have filed a Michigan income tax return claiming resident status or, if he or she is a new resident who has not yet been required to file a Michigan income tax return, he or she must intend to file a return claiming resident status.

How does an unremarried surviving spouse establish qualification of his or her homestead for exemption?

An unremarried surviving spouse must meet the same residency and ownership requirements as the veteran. In addition, the unremarried surviving spouse must have been living with the disabled veteran at the time of his or her death and must have never remarried. Further, the disabled veteran to whom he or she was married must have been a Michigan resident at the time of his or her death, must have owned a Michigan homestead at the time of his or her death and must be determined to have been qualified for disability benefits under one of the three specified Department of Veteran's Affairs programs prior to his or her death. Qualification of the disabled veteran for benefits under other Department of Veteran's Affairs programs does not qualify the unremarried surviving spouse to receive the exemption.

I am the unremarried surviving spouse of a disabled veteran. My spouse and I lived in Ohio until his death. I recently moved to Michigan, am I eligible for the exemption?

No. The Act conveys eligibility to the unremarried surviving spouse based upon the eligibility of the disabled veteran. In order for the disabled veteran to have been eligible for the exemption, he or she would have had to be a resident of the State of Michigan before death.

Are parcels contiguous to the parcel I live on eligible for the exemption?

No. The Act is specific that the exemption is for real property owned and used as a homestead. A “Homestead” and a “Principal Residence” are not interchangeable terms. The criteria to qualify under the Principle Residence Exemption and to qualify for this exemption are not the same. Therefore, the qualification provided for contiguous vacant parcels under the Principal Residence Exemption does not apply.

Is the property eligible to receive a partial exemption if it is also used for a business purpose?

No. Unlike the Principal Residence Exemption, the property either qualifies for a 100% exemption, or it doesn’t qualify at all for the exemption. If it is used for any business or commercial purpose, other than for farming, it will not qualify for the exemption. The State Tax Commission has determined that a minor business activity such as a roadside fruit stand, which results in the use of 5% or less of the value of the parcel for business purposes is not disqualifying.

Is the property eligible to receive the exemption if there are other structures on the property which could be rented or used for a business purpose but are not currently being used?

Yes. Unlike the Principal Residence Exemption, the Disabled Veteran’s Exemption is determined by the actual use of the property. Provided that there is no other actual use of the property, other than farming, the property can qualify as the disabled veteran’s or unremarried surviving spouse’s homestead, if the other requirements are met.

If I own the land and am in the process of building a home which will be my homestead, will the property qualify for an exemption?

No. Until the property is actually occupied by the disabled veteran or unremarried surviving spouse, it cannot qualify for exemption. When the property is occupied, the disabled veteran or unremarried surviving spouse will be eligible for a part-year exemption.

I rent my home but pay property taxes as part of my rent, am I eligible?

No. The Act is specific that the property must be owned by the disabled veteran or by their unremarried surviving spouse.

I am a disabled veteran who is a lifelong Michigan resident. In addition to my primary residence, I also own a summer home “up north”. Are both of my homes eligible for the exemption?

No. The Act is specific that the property must be owned and used as a homestead.

My mother's home is in a life estate and I will receive the home upon her death. I live in the home with her now and pay the property taxes. Am I eligible for the exemption?

No. Your mother is the owner of the home; therefore you are not eligible for the exemption.

My home is in a trust. Am I eligible for the exemption?

That depends on the form of the trust. Any trust that shares ownership of the home (provides that there are additional current beneficiaries) other than the disabled veteran (and/or his or her spouse or unremarried surviving spouse) would not be eligible for the exemption. The Act does not provide for a partial exemption in the situation where the veteran or unremarried surviving spouse are only a partial owner of a property.

If I own stock or a membership in a residential cooperative, does my unit qualify for the exemption?

No. A membership or stock ownership in a cooperative is the ownership of an interest in a corporation, not the ownership of real property.

If I have a life estate, life lease "lady bird" life interest in my residence and the remainder interest is held by others, can my property qualify as my homestead?

Yes. If the other requirements for receiving the exemption are satisfied, then property occupied under a life estate, life lease or "lady bird" life interest can qualify as the disabled veteran's or unremarried surviving spouse's homestead.

If my home is in a joint tenancy or there are other co-owners, am I eligible for the exemption?

No. A joint tenancy is a form of concurrent ownership wherein each co-tenant owns an undivided share of property and the surviving co-tenant has the right to the whole estate. A co-ownership is a fractional ownership interest, with part ownership held by others. The Act does not provide for a partial exemption in the situation where you are a partial owner of a property. Ownership of the homestead by the disabled veteran with his or her spouse, as tenants by the entireties, is not disqualifying, however.

If I am disqualified from receiving the exemption by the fact that there are other joint tenants or co-owners, can I remove the other owners from the title and reapply for the exemption?

Yes. Further, if the property was the homestead of the qualified disabled veteran or unremarried surviving spouse during the relevant time period, it is the State Tax Commission's interpretation that the exemption can be granted by the Board of Review to begin on the date when the qualified disabled veteran or unremarried surviving spouse would have qualified for the exemption, but for the fact that there were disqualifying joint tenants or co-owners.

Eligibility Requirements:

In order to be eligible for the exemption, the disabled veteran must have been honorably discharged from the armed forces of the United States. He or she must be a Michigan resident. Additionally, he or she must meet one of three disability award qualification categories with the Department of Veteran's Affairs:

- (a) The disabled veteran must have been determined by the United States department of veterans' affairs to be permanently and totally disabled as a result of military service and entitled to veterans' benefits at the 100% rate.
- (b) The disabled veteran must have received a certificate from the United States veterans' administration, or its successors, certifying that he or she is receiving or has received pecuniary assistance due to disability for specially adapted housing.
- (c) The disabled veteran must have been rated by the United States department of veterans' affairs as individually unemployable.

The disabled veteran must have some form of award certificate documentation from the U.S. Department of Veteran's Affairs which indicates the actual award of benefits under the program to qualify for the exemption. A letter from the County Department of Veterans Affairs indicating they have reviewed their records and the veteran meets the qualification is insufficient. The unremarried surviving spouse of the disabled veteran is eligible for the exemption based upon the eligibility of his or her spouse. Therefore, the spouse must also be a Michigan resident. The exemption will continue only as long as the surviving spouse remains unremarried.

All three disability ratings from the Department of Veteran's Affairs which qualify the veteran for an exemption require that the veteran's disability must have been service-connected. The Department of Veteran's Affairs determinations which qualify for exemption must not be confused with other veteran's programs which provide benefits based on a disability which is not service-connected. A service connected-disability as a disability related to an injury or disease that developed during or was aggravated while on active duty or active duty for training.

How is a determination made that the disabled veteran is permanently and totally disabled as a result of military service and entitled to veterans' benefits at the 100% rate?

The Veteran's Administration Schedule for Rating Disabilities is used to assess the medical conditions and illnesses incurred or aggravated during the veteran's military service and a percentage rating from 0% to 100% is assigned based on the severity of the disability. Individuals filing the affidavit for the exemption under criteria a) must provide a copy of the letter from the Veterans' Administration indicating they have a 100% service connected disability and are entitled to receive benefits. The Act does not require the disabled veteran to have already received the benefit, it only requires that he or she has been determined to be permanently and totally disabled as a result of military service and entitled to veterans' benefits at the 100% rate.

What is assistance for specially adapted housing?

The Veterans' Administration provides veterans having certain specified permanent and total service-connected disabilities with financial assistance to purchase or construct an adapted home or modify an existing home to accommodate a disability. There are two grant programs: specially adapted housing grant (SAH) and the special housing adaptation grant (SHA). The State Tax Commission has determined that receipt of either grant would qualify an individual for the exemption under criteria b). Individuals filing the affidavit for the exemption under criteria b) must provide a copy of the certificate from the Department of Veteran's Affairs indicating they are receiving or have received pecuniary assistance due to disability for specially adapted housing.

What does "individually unemployable" mean?

Individual unemployability is part of the Veteran's Administration disability compensation program. Under this program, veterans may receive compensation at the 100% rate even though their service connected disability is not rated at 100%. The Veteran's Administration determines eligibility and in order to be eligible, a veteran must prove they are unable to maintain substantially gainful employment as a result of their service connected disability. In addition, the veteran must have one service-connected disability rated at 60% or more or two or more service connected disabilities with at least one rated at 40% or more with a combined rating of 70% or more. Individuals filing the affidavit for the exemption under criteria c) must provide a copy of the letter from the Veteran's Administration indicating they are individually unemployable. The assessor and Board of Review are not required to, or permitted to assess the veteran's qualifications independently. Instead, documentation issued by the Department of Veteran's Affairs must form the basis for the evaluation and qualification for the exemption.

Is there an asset test and/or means test to determine eligibility?

No, there is no asset test and/or means test to determine eligibility. In order to be eligible, the disabled veteran must meet the requirements of Public Act 161 of 2013 regardless of the income or the value of the assets of the veteran or the unremarried surviving spouse.

Can a veteran still receive the exemption if he or she is gainfully employed?

Yes, unless the veteran's claim of the exemption is based on category (c), being rated as individually unemployable. Categories (a) and (b) are ratings based on the specific nature of the veteran's disabilities and do not depend on whether the veteran can actually hold gainful employment.

Can the local assessor make the determination that the veteran qualifies for the exemption, or must the Board of Review grant the exemption?

It is the State Tax Commission's interpretation, based upon wording of the statute, that every Disabled Veterans Exemption must be approved or confirmed by the Board of Review. If the assessor receives the required paperwork from a qualified veteran prior to sending the assessment change notices in February of the assessment year, the assessor can provisionally grant the exemption. This will allow assessors to avoid sending an assessment notice that may lead the veteran to believe that the exemption has been denied and that they must protest to the March Board of Review in order to receive the exemption. However, the assessor must then submit the exemption documentation to the March Board of Review at its organizational meeting and the Board must

approve or disapprove the exemptions. In situations where the required paperwork is received after the assessor turns the roll over to the March Board, the exemption may only be granted upon action by the Board of Review. A protest by the taxpayer is not required in these instances, and the Board of Review can act on its own motion to approve or deny the exemption.

Can the local Board of Review deny the exemption of a disabled veteran who has received a designation from the Veteran's Administration of 100% total and permanently disabled or individually unemployable or who is received assistance for specially adapted housing?

If the veteran or unremarried surviving spouse meets the requirements of the Act and has received a determination of 100% total and permanent disability or individually unemployable or is receiving or has received assistance for specially adapted housing, the Board of Review cannot make an independent determination that they do not believe the veteran or unremarried surviving spouse is entitled to the exemption and therefore deny the exemption.

What is the deadline for submitting the documentation?

Except for the 2013 assessment year (when the 2014 July Board of Review can grant the exemption), the final date for granting the Disabled Veterans Exemption for a given assessment year is the date that the December Board of Review for that year is held.

Changes in the Property's Status during the Course of the Assessment Year:

The Disabled Veteran's exemption is not an exemption for the benefit of the property. Instead, it is an exemption personal to the qualifying disabled veteran or the unremarried surviving spouse of the qualified deceased disabled veteran. Since the exemption is personal to the qualified individual, the exemption only extends to the taxes actually paid by the disabled veteran or the unremarried surviving spouse. Therefore, if the exemption status of the property changes during the assessment year, the assessor is directed to act to proportionally remove the exemption. Where the ownership of the property changes, the assessor is directed to obtain a copy of the closing statement to determine the actual amount of both the summer and winter property taxes paid by the disabled veteran or unremarried surviving spouse in the year of the sale. Only the taxes paid by the veteran or unremarried surviving spouse, (directly, or indirectly as part of the closing process) may be abated and/or refunded. However, even if the taxes have been paid by the qualified disabled veteran or the unremarried surviving spouse, the taxes refunded or abated cannot exceed the amount of taxes actually allocated to him or her in the closing statement.

During the assessment year, if ownership of the property is *acquired* by a qualified disabled veteran or the unremarried surviving spouse of a qualified veteran, how do the claimant and the assessor proceed?

The qualified disabled veteran or the unremarried surviving spouse should follow the normal application process except that the claimant must also submit the closing statement associated with the property purchase transaction and, after the documentation is reviewed by the assessor, he or she submits the documentation to the next meeting of the Board of Review with a recommendation relative to the claim. If the Board of Review determines that the exemption should be granted, it approves the claim, but also indicates the amount of the current year's summer and winter taxes to be refunded or abated. If taxes are refunded, the refund is issued to the veteran or the unremarried

surviving spouse, but the refund and/or abatement cannot exceed the amount of taxes actually allocated to him or her in the closing statement.

If the veteran or unremarried surviving spouse purchases the property but does not immediately occupy the property as his or her homestead, does the property qualify for exemption?

It is common in residential property purchase agreements to provide that the seller may continue to occupy a home for a short period after the sale is completed. It is also common that the purchaser does not occupy a residential property until shortly after the closing. If the period between the closing and the date the property became the veteran's or unremarried surviving spouse's homestead is thirty days or less, then the proration of taxes shown on the closing statement may be used to determine the amount of taxes to be abated and/or refunded. If occupancy is delayed for more than thirty days after closing, the amount of taxes abated or refunded *shall be the lesser of* the amount that the veteran or unremarried surviving spouse was required to pay according to the closing statement or the amount of current-year taxes which would normally be assigned to the purchaser, as calculated on a calendar-year basis.

During the assessment year, if ownership of property is *surrendered*, either entirely or by adding an owner other than the veteran's spouse, how do the claimant and the assessor proceed?

The Disabled Veteran's Exemption is only available for the period that the disabled veteran or unremarried surviving spouse was both the owner of the property and occupied it as his or her homestead while a Michigan resident. The veteran or unremarried surviving spouse is required to inform the assessor if he or she surrenders ownership of the property, or adds owners to the title other than the veteran's spouse. If ownership of the property is surrendered, or if co-owners are added, the assessor shall determine the amount of the taxes which should not be abated based on the closing statement for the sale transaction or, if there was no sale involved, the date that the disqualifying event occurred. The assessor shall then petition the State Tax Commission to add the property to the roll as omitted property pursuant to MCL 211.154. The petition should be submitted based on the assessed and taxable value which would have been determined had the exemption not been in place. The petition so filed shall also indicate the amount of the tax reduction which should be spread, based on the proration made at the closing of the sale. After approval by the State Tax Commission, the Treasurer may cancel the portion of the tax billing which corresponds to the prorated portion of the current year taxes prorated to the veteran's occupancy of the residence and qualification of the exemption.

How are the current year's taxes prorated if there was no closing statement or if no tax proration occurred when the veteran or unremarried surviving spouse purchased the property?

If there wasn't a formal proration of taxes included in the sale of the property, then it is likely the disabled veteran or unremarried surviving spouse paid no taxes in the year of the sale and the amount of the current year exemption is zero dollars. If the veteran or unremarried surviving spouse does not provide a copy of the closing statement, assessors should assume that the disabled veteran or unremarried surviving spouse paid no prorated current-year taxes. If the parties closed the sale informally, without an attorney or real estate broker and the assessor and Board of Review are

satisfied no closing statement was made, then the taxes may be abated and/or refunded based on a proration of both the current-year summer and winter taxes made on a calendar-year basis. In no event, however, may the amount of taxes refunded and/or abated exceed the amount of the taxes actually paid by, or otherwise due from the qualified disabled veteran or unremarried surviving spouse.

How are the current year's taxes prorated if there was no closing statement or if no tax proration occurred when the veteran or unremarried surviving spouse sold the property?

If there was not a formal proration of taxes included in the sale of the property, then it is likely the disabled veteran or unremarried surviving spouse paid no taxes in the year of the sale and the amount of the current year exemption is zero dollars. If the new owner will not provide a copy of the closing statement, assessors should assume that the disabled veteran or unremarried surviving spouse paid no prorated current year taxes.

How are the taxes prorated if the veteran or unremarried surviving spouse continues to own the property but no longer occupies the property as his or her homestead, either because they have moved elsewhere or are no longer a Michigan resident or are determined to be no longer eligible for other reasons?

If the property no longer qualifies to be treated as exempt and the circumstances do not allow the assessor to determine the proration of taxes by other means, the assessor and/or the Board of Review shall prorate the summer and winter tax bills for the year by prorating on a calendar-year basis to the date that the status of the property changed.

Other Questions and Answers:

How should an assessor proceed if he or she determines that an exemption was granted when the claimant or property did not qualify, or that the claimant qualified but the exemption was mistakenly granted for a contiguous parcel?

If a local unit determines that an exemption was granted under this Act to an individual that was not eligible or was granted for non-eligible contiguous property, the local unit may file a MCL 211.154 to correct the error or may take other such action that they deem appropriate to correct the error.

How should the assessor show the disabled veteran's exempt property on the roll and how should he or she handle Headlee Additions and Losses, Capped value Addition and Loss and Equalization New and Loss?

The qualified disabled veteran or unremarried surviving spouse must refile for the exemption on an annual basis, in a manner similar to the Poverty Exemption under MCL 211.7u. If a current recipient of the exemption does not submit his or her affidavit and other documentation by the time the roll is transmitted to the March Board of Review, the assessor must place the property on the roll, as would be the case for the Poverty Exemption. Further, the handling of Headlee Additions and Losses, Capped Value Addition and Loss and Equalization New and Loss is the same as for the Poverty Exemption. When the property is returned to the roll, the Taxable Value is established in an amount calculated using the same procedures as are used for the Poverty Exemption.

If a surviving spouse of a qualified disabled veteran remarries and then divorces, or is again widowed, is he or she qualified as an unremarried surviving spouse?

No. “Unremarried” means that the spouse has remained unmarried since the date of the veteran’s death.

If the Board of Review is aware that a qualified disabled veteran or unremarried surviving spouse is in the process of selling the property claimed as his or her homestead, can they deny the exemption?

Yes. If the Board of Review is aware that the claimant is in the process of selling the property, the State Tax Commission believes that this fact provides evidence that the claimant does not “always intend to return” to that property, and that the property is no longer the claimant’s homestead.

If the disabled veteran already owns a qualifying homestead but has not yet obtained the necessary Department of Veteran’s Affairs determination letter, can the exemption be granted after they receive and submit the letter?

Yes. When the determination letter is received, it can be submitted to the Board of Review, along with the other required documentation and the Board of Review may grant the exemption. The taxes abated and/or refunded shall be calculated in the same manner as they would if the claimant acquired ownership of the property part way through the assessment year. The date which is used for calculation of the canceled taxes is the effective date of the award letter, if that date is earlier than the date of the disability award letter. However, the Board of Review does not have the authority to direct the cancelation of taxes for a prior assessment year.

If a surviving spouse was married to a person who died in the line of duty, does he or she qualify for the exemption?

No. Unfortunately, the exemption is only available to unremarried surviving spouses of disabled veterans who have received the requisite determination from the Department of Veteran’s Affairs.

Is it possible for a veteran or unremarried surviving spouse to be granted a partial Disabled Veterans Exemption if the property is being used for business purposes or there are co-owners?

No. Unlike the Principal Residence Exemption and the Poverty Exemption, there are no partial exemptions; the exemption is either granted at 100% or denied.

If there is an unused commercial building, second residence or apartment on the parcel claimed as the homestead, is the parcel disqualified?

No. Unlike the Principal Residence Exemption, the Disabled Veterans Exemption depends on their being no actual other use of the parcel. A potential alternative use is not automatically disqualifying.