

100% Disabled Veterans' Exemption Update: Qualification Criteria In Light of Recent Case Law



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The Law Today

- **Wartime Service**
 - Operation Northern/Southern Watch
 - Operation Enduring Freedom
 - The/a theater of operation
 - Facts and circumstances of individual applicants service
- **Ownership**
 - No longer require full ownership/tenancy by the entirety
 - Exemption on proportionate share of ownership

The Cases

Wellington v. Hillsborough (2012)

Qualifies while joint tenant
with ex-wife

“In Direct Support” of
Operation Northern/Southern
Watch while stationed in US

- *Hays v. Paramus* (2015)
 - Tenancy in
Common Qualifies

- *Fisher v. Millville* (2016)
 - Loading materials for
transport at US base not “in
direct support”

- *Galloway v. Duncan* (2016)
 - Treating wounded soldiers
arriving in US directly from
battlefield is “in direct
support”

Wellington v. Hillsborough

27 N.J. Tax 37 (Tax 2012)

Military Service

- Served in US Navy from September 24, 1997 to September 24, 1999
- Served in a military laboratory in San Diego
- Tested chemical agents recovered from battlefield in Iraq
- Declared 100% Permanently Disabled by US Dept. of Veterans Affairs
 - Multiple Sclerosis developed from exposure to chemical agents

Wellington v. Hillsborough

Property Ownership

- Purchased house in Hillsborough in 2007
- Joint tenancy with right of survivorship with ex-wife
- Applied for Disabled Vets exemption in 2009, denied by assessor
 - Did not serve minimum of 14 days “in the actual combat zone”
 - Only partial owner of house

Wellington v. Hillsborough

Somerset County Tax Board

- Appealed denial of exemption to Somerset County Board in 2011
- Board affirms the denial
- Appeals decision of Somerset County Board to Tax Court
 - Denial of Exemption
 - Assessed value

Wellington v. Hillsborough

Tax Court

- Wartime Service
 - Operation Northern/Southern Watch, no strict geographic requirement
 - “In the theater of operation, including in the Arabian peninsula and the Persian Gulf”
 - Other service periods, specific country or countries
 - In direct support of the operation
 - Chemical weapons were brought from the battlefield
 - Same exposure to danger as soldier in Iraq

Wellington v. Hillsborough

Tax Court

- Ownership
 - Former N.J.A.C. 18:28-2.10 allowed joint tenants to qualify if owned as domestic partners (*Hennefeld v. Montclair*)
 - Nothing in the statute points to limitations on type of ownership
 - No principled reason why form of ownership should be restricted

Wellington v. Hillsborough

Takeaways

- Ownership
 - Joint tenancy now qualifies for exemption
 - Restriction on tenancy in common qualification would likely fall
- Service
 - Broadly-written geographic descriptions
 - careful examination of specific service
 - Language of Operation Enduring Freedom equally broad

Hays v. Paramus

28 N.J. Tax 342 (Tax 2015)

Facts

- Widow of 100% Disabled WWII Veteran
 - Property received exemption during his lifetime
- Property held as tenancy in common with testamentary trust
- Unique property
 - Main House, Mill House, Farmer's Market
- Exemption had been granted for 1/2 value of Main House & curtilage
- Bergen County Board of Taxation dismissed appeal without prejudice

Hays v. Paramus

Tax Court

- “Dwelling house and curtilage”
 - Taxpayer argues for everything but the farmer’s market
 - Town contends only Main House
- No evidence of use of wooded portions of property
- Mill House had been rented to third-parties for many years
 - Granddaughter there to “look after” widow
 - Convenient, but not necessary for reasonable enjoyment of property
 - “Typical” residential lot dimensions sufficient

Hays v. Paramus

Tax Court

- Ownership as tenants in common
 - Veteran only had 50% ownership as tenant in common
 - Widow now shares tenancy in common with testamentary trust
 - Expired regulations did not allow for tenants in common to qualify
 - Following *Wellington*, no principled reason for prohibiting proportionate exemption for tenants in common

Hays v. Paramus

Tax Court

- Ownership as tenants in common, continued
 - Widow can only receive exemption enjoyed by veteran during his lifetime
 - Must be successor in interest that veteran held in the property
 - Veteran's interest now held by testamentary trust
 - But that trust is for the widow's benefit
 - Technically, the trust's interest as tenant in common qualifies for the exemption

Hays v. Paramus

Takeaways

- Ownership
 - Tenancy in common now qualifies
 - following *Wellington*
 - BUT NOTE: Testamentary trust was for widow's benefit
 - If it wasn't, likely would not have qualified
 - She wasn't successor to husband's interest, trust was

Fisher v. Millville

29 N.J. Tax 91 (Tax 2016)

Facts

- Enlisted in US Army June 4, 2002
- Injured during training exercise in October 2002
- Served at Fort Stewart, Georgia, March 12, 2003 through December 28, 2003 as part of Rear Detachment
- Processing and shipping weapons, food, clothing, and supplies to rest of unit deployed to Afghanistan
- Declared 100% Disabled by US Dept. of Veterans Affairs
- Owned property in Millville with husband

Fisher v. Millville

Cumberland County Tax Board

- Assessor denied application for exemption
 - not meeting 14-day service requirement in “combat zone”
- Cumberland County Board denies the appeal
- Appeals to the Tax Court

Fisher v. Millville

Tax Court

- Wartime service periods added after Vietnam Conflict require 14 days in geographic region
 - Tightening requirements to receive property tax benefits
- Operation Enduring Freedom
 - “In a theater of operation and in direct support of that operation”
- While no specific geographic limitation, must first determine if “in direct support”

Fisher v. Millville

Tax Court

- Following *Wellington*, “direct support” found where there is exposure to the dangers of the battlefield
- Handling materials stateside does not rise to the level of direct support
- The ultimate destination of the supplies is not determinative
 - If two soldiers at same base
 - One ships materials to Europe
 - One ships materials to Afghanistan
 - Would be absurd result for only the latter to qualify

Fisher v. Millville

Tax Court

- Exposure to danger is not sole qualifier
 - Leaves open possibility drone operator might qualify
- Legislature has made qualification more narrow for recent conflicts

Fisher v. Millville

Takeaways

- “Direct support” is primary question for applicants not serving in combat in country
- “Exposure to danger” is one factor in finding applicant was “in direct support”
 - Court did not articulate other factors
- Specific facts and circumstances of an applicants service must be examined to make determination

Galloway v. Duncan

29 N.J. Tax 520 (Tax 2016)

Facts

- Attended Officer Training School, commissioned, went to Robert Wood Johnson School of Medicine
- Active duty tour from August 21, 2006 to September 30, 2010
- Served at Andrews Air Force Base in Maryland as a neurologist

Galloway v. Duncan

Facts

- Performed triage for soldiers arriving direct from Iraq and Afghanistan
 - Often first doctor treating after leaving the battlefield
- Performed evaluations for traumatic brain injury via video link
- Declared to have 100% service-connected disability on April 19, 2013

Galloway v. Duncan

Atlantic County Tax Board

- Assessor denies exemption
- Atlantic County Board approves the exemption
- Galloway Township appeals to the Tax Court

Galloway v. Duncan

Tax Court

- Did she meet wartime service criterion?
- Once again, Operation Enduring Freedom
 - “A theater of operation in direct support of that operation”
- Legislature can define qualifying conflicts
 - Ex: Operation Uphold Democracy in Haiti qualifies for civil service preference but not property tax benefits

Galloway v. Duncan

Tax Court

- Following *Wellington*, broad wording of geographic area not limited to country in which combat occurs
- Operation Enduring Freedom is the “Global War on Terror”
 - “a theater of operation” may be found in many places
- Court finds service at Andrews Air Force Base is in “a theater of operation”

Galloway v. Duncan

Tax Court

- Was service “in direct support”?
- Compare *Wellington* and *Fisher*
 - *Wellington*
 - Chemical agents from battlefield brought to him
 - *Fisher*
 - Shipping materials, destination of those materials is not controlling

Galloway v. Duncan

Tax Court

- “Direct support”
 - Benefit to “compensate veterans for the experiences of war” (*Wrightstown v. Medved*)
- Duncan treats soldiers who had suffered injuries on the battlefield
 - While stationed in US, treated soldiers who would’ve been in field hospitals in prior conflicts
- Disability was a result of the grave injuries she encountered on a daily basis while serving

Galloway v. Duncan

Tax Court

- Competing federal regulations
 - Branch award regulations require service on foreign soil
 - Joint Chiefs of Staff regulations have no geographic limitations
- Expired NJ regulations requiring service in “combat zone” have no statutory basis
- Court holds that direct support requires some experience of war
 - Duncan had such an experience

Galloway v. Duncan

Takeaways

- Operation Enduring Freedom service must be:
 - In a theater of operation, which can be in the US
 - In direct support means having some experience of war
- Specific facts of the applicants service relevant to qualification

Fisher v. Millville

N.J. Superior Court, Appellate Division
Decided July 7, 2017

Appellate Division

- Fisher appealed to the Appellate Division
- Rejects her argument that post-Vietnam wartime service periods actually less restrictive
 - Some recent service periods restricted to a single country
- Reaffirms exposure to harms of war a key factor for “direct support”

Overarching Developments

- No restrictions on form of ownership
 - Proportionate share of tenancy in common and joint tenancy will be exempt
- Operation Enduring Freedom
 - No set geographic area
- Direct Support
 - Exposure to the harms of the battlefield

Remaining Questions

- What other factors exist for “direct support”?
 - Would a drone operator qualify?
- Are there any geographic areas that are not “a theater of operation”?
 - Is “direct support” the only question for Operation Enduring Freedom?

P.L. 2017, c. 134

- Adds new wartime service period
 - Period of rescue and recovery of victims of 9/11 terrorist attack
 - Served on the pile of rubble that resulted from those attacks
 - In direct support of that rescue and recovery effort
 - 14 days service between September 11, 2001 and May 30, 2002

P.L. 2017, c. 134

- Definition of service is more restrictive
 - “On the pile of rubble”
- Division of Taxation meeting with NJ Department of Military and Veterans Affairs
 - How to prove qualification?
- Will post guidance on Portal for NJ Assessors

N.J.A.C. Title 18, Chapter 28

- Expired on September 18, 2013
- Proposed replacement published in N.J. Register on June 19, 2017 (49 N.J.R. 1668(a))
- Address the recent case law
 - No longer restrictions on qualifying types of ownership
 - Guidance on “direct support”
 - Eliminate “combat zone” requirement

Questions?

- Questions on the law
 - Contact the Property Administration Policy & Planning
 - Kevin.boyle@treas.nj.gov; 609-292-7202
 - Susan Dobay: 609-633-8443; Pamela Allen: 609-633-2635; Diane Breyer: 609-943-4401
- Questions on military service
 - Contact NJ Department of Military & Veterans Affairs
 - Paul Kale, Staff Assistant
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