

To: New Jersey Law Revision Commission
From: Erik Topp
Re: *Galloway Township v. Duncan*
Property Tax Exemption for Disabled Veterans, N.J.S. 54:4-3.30, 54:4-8.10
Date: February 5, 2018

MEMORANDUM

Executive Summary

In *Galloway Township v. Duncan*,¹ the Tax Court considered the propriety and interpretation of a statute allowing veterans suffering permanent disabilities to claim a property tax exemption.²

The court determined that the exemption is valid under the state constitution and may be claimed by any veteran whose service in “direct support” of a military conflict resulted in their declaration as 100% disabled by the Veterans Administration.³

Background

Lucienne Reed Duncan, a former Air Force doctor who served in the armed forces from 1997-2010, sought a property tax exemption under N.J.S. 54:4-3.30.⁴ Duncan served primarily as a neurologist, treating personnel with head and brain trauma from explosives, though her work was conducted at Andrews Air Force Base, not abroad.⁵

She treated military personnel injured in combat including exposure to and suffering from IED (improvised explosive device) blasts, gunfire and artillery fire. She had to treat service members on an emergency basis who suffered from shrapnel wounds, dismembered extremities, traumatic brain injuries, eye injuries, paralysis, and head and spine injuries. She had to perform full medical disaster care including stabilizing the body as well as procedures such as spinal taps, tourniquet wound care, endotracheal placements, and triage diagnostics.⁶

Duncan’s work was often troubling; in her testimony, she “tearfully described that she often dealt with soldiers who had lost limbs and suffered serious injuries to the spine and head”

¹ 29 N.J. Tax 520 (2016).

² *Id.* at 522.

³ *Id.* at 524–25, 527, 536.

⁴ *Id.* at 522.

⁵ *Id.* at 522–23. While Duncan was stationed at Andrews, she was the first doctor the overwhelming majority of her patients were brought to. *Id.*

⁶ *Id.* at 523.

and “broke down in tears when describing service members die in front of her.”⁷ While Duncan has not been officially diagnosed with Post-Traumatic Stress Disorder, she holds a 100% disability rating from the Veterans Administration and has been unable to pursue a career as a neurologist in private practice.⁸

New Jersey’s Constitution permits the Legislature to provide particularized tax exemptions for veterans with service-connected disabilities.⁹ Pursuant to this rule, the Legislature has enacted several exemptions, including the exemption for personal residential property taxes under N.J.S. 54:4-3.30, which states in relevant part that a New Jersey resident who has been

honorably discharged or released under honorable circumstances from active service, in time of war, in any branch of the Armed Forces of the United States . . . [and suffers from any] service-connected disability declared by the United States Veterans Administration or its successor to be a total or 100% permanent disability, and not so evaluated solely because of hospitalization or surgery and recuperation, sustained through enemy action, or accident, or resulting from disease contracted while in such active service, shall be exempt from taxation, on proper claim made therefor, and such exemption shall be in addition to any other exemption of such person’s real and personal property.¹⁰

This rule is read in conjunction with N.J.S. 54:4-8.10, which outlines in pertinent part the conditions under which a service member is involved in “active service.” The Operation Enduring Freedom portion of N.J.S. 54:4-8.10 reads as follows:

“Active service in time of war” means active service by a person, while in the United States Armed Forces, at some time during one of the following periods:

Operation “Enduring Freedom”, on or after September 11, 2001, who served in a theater of operation and in direct support of that operation for a period, continuously or in the aggregate, of at least 14 days in such active service commencing on or before the date the President of the United States or the United States Secretary of Defense designates as the termination date of that operation; provided, that any person receiving an actual service-incurred injury or disability while engaged in such service

⁷ *Id.* at 523.

⁸ *Id.* at 524.

⁹ *Id.* at 524–25 (citing N.J. Const. art. VIII, § 1, ¶ 3).

¹⁰ *Id.* at 525; N.J.S. 54:4-3.30.

shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided[.]¹¹

The court determined that Duncan qualified for an exemption under the statutes. While her service was remote from the battlefield, it was in a “theater of operation” during the conflict: the court found that Andrews Air Force base is a part of Operation Enduring Freedom, as there is effectively no geographic limit to the war.¹² Duncan’s service was also found to be in “direct support” of the war: the court noted that while she was separated from the hot part of the conflict, “the condition of [Duncan’s] patient soldiers were not necessarily any less severe or critical than those seen by medical professionals in prior conflicts in which the same medical care took just as long to receive but was provided closer to the battlefield.”¹³

Conclusion

While the current statutory language can be argued to be relatively clear, the Court found itself reviewing New Jersey legislative history and intent, case law, federal law, regulations adopted by the Director of the Division of Taxation, and language from the Internal Revenue Code in order to make a determination in this case. As the Court discusses, there are competing potential definitions of “direct support” which were not addressed by the Legislature, between a narrow constructions from the Joint Chiefs of Staff and federal Internal Revenue Code, and a requirement found in several other states that the service member earn a medal to be eligible for similar exemptions.¹⁴ Staff seeks authorization to engage in additional research and outreach in this area to determine whether codifying a clear definition of “direct support” would limit the need for litigation over issues like the one presented in this case.

¹¹ N.J.S. 54:4-8.10.

¹² *Galloway Twp.*, 29 N.J. Tax at 527–29 (referencing N.J.S. 54:4-8.10).

¹³ *Id.* at 531.

¹⁴ *Id.* at 532–36.