

**NOT FOR PUBLICATION WITHOUT APPROVAL OF  
THE TAX COURT COMMITTEE ON OPINIONS**

|                           |   |                         |
|---------------------------|---|-------------------------|
| -----X                    | ) | TAX COURT OF NEW JERSEY |
| ROSANNA PRUENT-STEVENSON, | ) |                         |
|                           | ) |                         |
| Plaintiff,                | ) | DOCKET NO: 010172-2016  |
|                           | ) |                         |
| v.                        | ) |                         |
|                           | ) |                         |
| TOWNSHIP OF TOMS RIVER,   | ) |                         |
|                           | ) |                         |
| Defendant.                | ) |                         |
| -----X                    | ) |                         |

Approved for Publication  
In the New Jersey  
Tax Court Reports

Decided: October 2, 2017

Todd W. Heck for plaintiff (Testa, Heck, Testa & White, P.A., attorneys).

Anthony Merlino, Assistant Township Attorney, for defendant (Kenneth B. Fitzsimmons, Township Attorney, on the briefs).

Steven J. Colby, Deputy Attorney General, *Amicus Curiae* for State of New Jersey (Christopher S. Porrino, Attorney General of New Jersey, attorney).

BRENNAN, J.T.C.

Plaintiff is the surviving spouse of a Vietnam veteran who died from a 100% wartime service-connected disability. She appeals the Judgment of the Ocean County Board of Taxation denying her application for a veteran's property tax exemption pursuant to N.J.S.A. 54:4-3.30 for tax year 2016. At issue is the effect of the constitutional and statutory language requiring that the exemption be during a surviving spouse's widowhood or widowerhood. For the reasons set forth in this opinion, the court finds that the term "widow" and "widower" defines a person and not the

continued marital status of the person; that an applicant's marital status does not become relevant until such time as the United States Department of Veterans Affairs determines that the deceased spouse was 100% disabled due to military service; that the Legislature's use of the qualifying phrase "has not remarried" is meant to reflect current marital status during "widowhood" or "widowerhood"; and that Plaintiff met the statutory requirements for a veteran's property tax exemption on her residence for tax year 2016.

### **I. Findings of Fact and Procedural History**

In 1967, Peter J. Pruent enlisted in the United States Army upon graduation from high school. Trained as a combat soldier and sharp shooter, he served in Vietnam from November 15, 1967 to November 14, 1968 and fought in the Tet Offensive.<sup>1</sup> Honorably discharged with the rank of sergeant after two tours of duty, he was a decorated war veteran earning multiple medals including the National Defense Service Medal, the Vietnam Service Medal, and the Vietnam Campaign Medal.

Sgt. Pruent married Rosanna Ignomirello (now known as Rosanna Pruent-Stevens and hereinafter designated as "Plaintiff") in 1973 when he was twenty-five and she was seventeen. Sgt. Pruent found work as an electrical contractor and the couple welcomed a daughter in 1980. During this time, the family resided in Kenilworth, New Jersey.

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<sup>1</sup> In late January, 1968, during the lunar new year (or "Tet") holiday, North Vietnamese and communist Viet Cong forces launched a coordinated attack against a number of targets in South Vietnam. The U.S. and South Vietnamese militaries sustained heavy losses before finally repelling the communist assault. The Tet Offensive played an important role in weakening U.S. public support for the war in Vietnam. See U.S. Involvement in the Vietnam War: The Tet Offensive, 1968, Off. of the Historian, <https://history.state.gov/milestones/1961-1968/tet> (last visited July 13, 2017).

In 1983, after the birth of his second daughter, Sgt. Pruent's health slowly and progressively began to deteriorate. Sgt. Pruent died on August 31, 1989 at the age of 41. The cause of death was Ventricular Arrhythmias and Cardiomyopathy.

At the time of his death, a national dialogue about the health risks associated with our soldiers' exposure to Agent Orange<sup>2</sup> and other herbicides had been ongoing for almost two decades. Nevertheless, the United States Armed Forces had not yet acknowledged a causal connection between herbicide exposure during military service and certain health conditions.<sup>3</sup> Consequently, upon the death of her husband, Plaintiff became an unemployed widow with two small children, and no benefits from the United States Veterans Administration (now known as United States Department of Veterans Affairs and herein referred to as "VA").

Without a career, health insurance, or financial stability, the Plaintiff found herself in dire straits. Beginning in 1990, Plaintiff filed her first of many applications to the VA for Dependency and Indemnity Compensation ("DIC") benefits. She also joined other Vietnam veterans and their

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<sup>2</sup>Agent Orange was a tactical herbicide used by the U.S. military from 1962 to 1975, named for the orange band around the storage barrel. The military sprayed millions of gallons of Agent Orange and other tactical herbicides on trees and vegetation during the Vietnam War. Veterans who may have been exposed to Agent Orange include Veterans who were in Vietnam, the Korean Demilitarized Zone, on Thai Air Force bases, and who flew on or worked on C-123 Aircraft. Several decades later, concerns about the health effects from these chemicals, including dioxin, a byproduct of Agent Orange production, continue. Agent Orange, Pub. Health, U.S. Dept. of Veterans Affairs, <https://www.publichealth.va.gov/exposures/agentorange/> (last updated June 2, 2017).

<sup>3</sup> Congress passed its first legislation that dealt with the issue of military use of herbicides in Vietnam (Public Law 91-441) on October 1, 1970. This law directed the Secretary of Defense to contract with the National Academy of Sciences to conduct a comprehensive study of the ecological and physiological dangers in the use of herbicides, and the defoliation program carried out in Vietnam. For a comprehensive account of veterans and their exposure to herbicides, See Div. of Health Promotion and Disease Prevention, Inst. of Med., Veterans and Agent Orange: Health Effects of Herbicides Used in Vietnam 47 (1994).

families in a class action lawsuit against the private manufacturers of Agent Orange and the other herbicides used during the war, from which she received a small settlement in the amount \$2,000 in 1996.

Due to a number of court decisions<sup>4</sup> and the enactment of the Agent Orange Act of 1991<sup>5</sup>, the VA slowly began to acknowledge the existence of specific herbicide diseases related to military service in Vietnam. Plaintiff's claim for DIC benefits, however, remained unresolved. Concerned about health insurance and financial stability for herself and her daughters, Plaintiff married Charles J. Stevens in 1993. Twenty-three years her elder, and also a veteran, Mr. Stevens died in 1997 after only four years of marriage.<sup>6</sup>

As years passed, Plaintiff continued to apply to the VA for DIC benefits and eventually for Dependents' Educational Assistance Program (Chapter 35)<sup>7</sup> benefits for her two daughters.

On February 12, 2014, almost 25 years after his death, the VA finally determined that Sgt. Pruent's premature death was "presumptively connected" to his military service in Vietnam.<sup>8</sup> The

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<sup>4</sup> See Nehmer v. U.S. Veterans Admin., 712 F.Supp. 1404 (N.D. Cal. 1989), aff'd, 284 F.3d 1158 (9<sup>th</sup> Cir. 2002), and its progeny; see 38 C.F.R. § 3.816 (2013).

<sup>5</sup> Agent Orange Act of 1991, Pub. L. No. 102-4, 105 Stat. 11 (1991).

<sup>6</sup> Mr. Stevens served in the Korean War from 1953 to 1955. He did not suffer a wartime disability that would have qualified him for a disabled property tax deduction pursuant to New Jersey law.

<sup>7</sup> In 1944, Congress passed legislation providing college educational assistance payments for returning World War II veterans known as the "GI Bill." Congress has re-authorized educational benefits to cover Korean, Vietnam, Iraqi, Afghanistan, and peacetime-era veterans. VA estimates that more than 21,300,000 veterans and eligible dependents have received approximately \$72.8 billion in educational benefits through these programs since 1944. See Veterans Guide to VA Benefits, VetsFirst.org, <http://helpdesk.vetsfirst.org/index.php?pg=kb.page&id=1785> (last visited July 7, 2017).

<sup>8</sup> In its report "Veterans and Agent Orange: Update 2008" released on July 24, 2009, the Health and Medicine Division of the National Academy of Sciences, Engineering and Medicine

VA approved DIC benefits retroactive to Sgt. Pruent's date of death,<sup>9</sup> and their daughters' rights to educational benefits. Plaintiff also became qualified for health care benefits, and commissary store and exchange privileges.

In its decision, the VA wrote in part:

The death of a Veteran will be considered as having been due to a service-connected disability when the evidence establishes that such disability was either the primary or contributory cause of death.

...The evidence of record shows the veteran served in the Republic of Vietnam from November 15, 1967 to November 14, 1968; therefore, exposure to herbicides used in Vietnam is conceded.

...As exposure to herbicides used in Vietnam is conceded and cardiomyopathy is a condition recognized under the authority granted by the Agent Orange Act of 1991, entitlement to service connection for the cause of the Veteran's death can be granted on a direct basis.

At the time of its decision, the VA was fully aware of Plaintiff's marriage to Mr. Stevens in 1993, as evidenced by the decision's reference to "Death certificate of claimant's second husband, Charles Stevens, received January 16, 2014." With full disclosure and knowledge, the

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concluded there is "suggestive but limited evidence that exposure to Agent Orange and other herbicides used during the Vietnam War is associated with an increased chance of developing ischemic heart disease." As a result, the VA began to recognize ischemic heart disease as being associated with a soldier's exposure to Agent Orange or other herbicides during military service, thus allowing for a wide range of benefits to be available to surviving spouses and dependent children, including retroactive compensation and health care benefits. The VA's final regulation recognizing this association took effect on October 30, 2010. See Diseases Associated With Exposure to Certain Herbicide Agents, 75 Fed. Reg. 53,202 (Aug. 31, 2010) (to be codified at 38 C.F.R. pt. 3).

<sup>9</sup> Originally benefits were retroactive to January 16, 2013, which was the date one year prior to Plaintiff's last application. Plaintiff filed a Notice of Disagreement requesting that the effective date be changed to the date of her husband's death. The VA thereafter amended the retroactive date to August 31, 1989.

VA termed Plaintiff “the un-remarried surviving spouse of Peter J. Pruent.” By law, her four-year marriage to Mr. Stevens was not a permanent bar to her eligibility for DIC.<sup>10</sup>

Once the VA made its determination, Sgt. Pruent posthumously became a veteran who met the qualifications for property tax exemption in New Jersey. On July 30, 2015, Plaintiff applied to defendant, Township of Toms River (“Municipality”), for a 100% disabled veteran’s exemption on her residence in Toms River, which she had acquired in 2002. Commonly known as 905 English Layne, the property is designated as Block 414, Lot 7.09, Qualifier C054, on the official tax map. For tax year 2016, the assessed value of the subject property was as follows:

|              |                   |
|--------------|-------------------|
| Land         | \$ 70,000         |
| Improvements | <u>\$ 125,300</u> |
| Total        | \$ 195,300        |

On August 4, 2015, the Municipality’s Tax Assessor issued Plaintiff a *Notice of Disallowance of Claim for Veteran's Exemption/Deduction* (the “Notice”). The Notice indicated that the application for the disabled veteran’s exemption was being disallowed based on N.J.S.A. 54:4-3.30(b)(1)<sup>11</sup>, which the assessor interpreted as terminating the exemption to surviving spouses who have at any time remarried.

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<sup>10</sup> The law and regulations governing the payment of DIC benefits have changed several times over the years. Prior to November 1990, the law allowed for reinstatement of VA death benefits to surviving spouses whose benefits had been terminated because of remarriage, if the remarriage ended in death, divorce, or annulment or was declared void. 38 U.S.C. § 103(d) (1989); 38 C.F.R. § 3.55(a)(4) (1989). The law was changed in November 1990 to create a permanent bar to reinstatement of VA death benefits for those surviving spouses whose disqualifying relationship had been terminated and whose claim for reinstatement of benefits was not filed before November 1, 1990. Omnibus Budget Reconciliation Act of 1990, Pub.L.No. 101-508, § 8004, 104 Stat. 1388-348 (Nov. 5, 1990). On October 1, 1998, the law changed again, essentially returning to the pre-1990 rule that remarriage would not bar a surviving spouse's eligibility for DIC if the remarriage ended in death, divorce, or annulment. 38 U.S.C. § 1311(e).

<sup>11</sup> The applicable statutory provision is N.J.S.A. 54:4-3.30(b)(2).

On November 9, 2015, the VA issued a letter, which set forth the following:

The records of the U.S. Department of Veterans Affairs disclose that the veteran's wartime service-connected disability was totally disabling. A 100% permanent and total evaluation was assigned effective August 31, 1989 in accordance with the Veterans Affairs Rating Schedule and not so evaluated because of hospitalization or surgery or recuperation.

The records further indicate that the veteran served in the United States Army from June 14, 1967 to February 17, 1971 and received an honorable discharge.

The veteran died on August 31, 1989.

The above statement is issued in accordance with N.J.S.A. 54:4-3.30.ET SEQ.

Plaintiff appealed the assessor's disallowance to the Ocean County Board of Taxation. On May 27, 2016, the Board issued a Memorandum of Judgment upholding the disallowance. Plaintiff filed a timely appeal to the Tax Court.

The Municipality filed a motion for summary judgment, which was opposed by Plaintiff, and which the Honorable Patrick DeAlmeida, P.J.T.C. denied. At the court's invitation, the Director, Division of Taxation filed a letter submission, which supported the Municipality's denial of exemption. Trial proceeded on June 5, 2017. By letters dated July 20, 2017 and September 21, 2017, the court requested post trial submissions to address issues and documents not discussed in the summary judgment briefs or during the trial.

## **II. Legal Analysis**

### **a. The Veterans Property Tax Exemption**

The United States has a long history of assisting its veterans, and its system of veterans' benefits is among the most extensive and comprehensive in the world.<sup>12</sup> The rationale for veterans benefits is that they are necessary to help those who served in wartime readjust to civilian life. Benefits compensate veterans for the risks they have taken on our country's behalf, and for the training and wages they may have lost because of the interruption in their education or career. To that end, constitutional and statutory provisions giving local property tax deductions or exemptions to resident veterans and their spouses recompense veterans for the experiences of war and also encourage them to purchase property in the state. Almost every state offers some type of reduction or exemption of property taxes to its resident veterans.<sup>13</sup>

New Jersey is no exception. Prior to 1947, New Jersey's various tax exemptions for veterans were granted by statute, not by constitutional authorization. However, in 1903, the Supreme Court of New Jersey in Tippett v. McGrath, 70 N.J.L. 110 (1903), determined that exemptions of property from taxation that are not based upon characteristics of the property or upon the uses to which the property is put, but on the personal status of the owner, were unconstitutional under Article IV, § VII, ¶ 12 of the Constitution in effect at that time. That section

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<sup>12</sup> The current VA can trace its roots back to 1636, when the Pilgrims of Plymouth Colony were at war with the Pequot Indians. The Pilgrims enacted a law that stated that disabled soldiers would be supported by the colony. See History – VA History, U.S. Dept. of Veterans Affairs, [https://www.va.gov/about\\_va/vahistory.asp](https://www.va.gov/about_va/vahistory.asp) (last visited July 7, 2017).

<sup>13</sup> See Kimberly Duncan, Full List of Property Tax Exemptions by State, Veterans United Network, (Nov. 9, 2016) <https://www.veteransunited.com/futurehomeowners/veteran-property-tax-exemptions-by-state/>.



provided that “property shall be assessed for taxes under general laws and by uniform rules, according to its true value.”<sup>14</sup>

The current State Constitution, adopted in 1947, for the first time provided a property tax exemption to honorably discharged veterans of the Armed Forces of the United States and their widows. Ratified in the wake of World War II, the 1947 New Jersey Constitution stated that:

Any citizen and resident of this State now or hereafter 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, shall be exempt from taxation on real and personal property to an aggregate assessed valuation not exceeding five hundred dollars, which exemption shall not be altered or repealed. Any person hereinabove described who has been or shall be declared by the United States Veterans Administration, or its successor, to have a service-connected disability, shall be entitled to such further exemption from taxation as from time to time provided by law. The widow of any citizen and resident of this State who has met or shall meet his death on active duty in time of war in any such service shall be entitled, during her widowhood, to the exemption in this paragraph provided for honorably discharged veterans and to such further exemption as from time to time may be provided by law.

[N.J. Const., art. VIII, § 1, ¶ 3.]

This provision of the State Constitution does not make any reference to remarriage.

There have been five amendments to Paragraph 3 since its enactment. A 1953 amendment specifically authorized the adoption of legislation that provides tax “exemptions” for disabled veterans. The amendment also extended veterans’ tax exemptions to veterans’ widows. A 1963 amendment revised the veterans’ deduction to \$50. In 1983, the term “widow” was amended to read “surviving spouse,” which allowed widowers of veterans to qualify for the deduction. In 1988,

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<sup>14</sup> See N.J. Const. of 1844, art. IV, § 7, ¶ 12

it was amended to authorize the Legislature to expand a veterans' tax deduction to shareholders in housing cooperatives. The most recent amendment, approved in 1999, provided an incremental increase in the veterans' property tax deduction. None of these amendments included or made reference to remarriage.

In response to the 1947 constitutional provision, the New Jersey Legislature enacted N.J.S.A. 54:4-3.30 ("Exemption Statute") in 1948, which provides for a total exemption from property tax for those veterans whom the VA has declared 100% permanently disabled as a result of their military service. Section (a) of the statute states, in pertinent part:

The dwelling house and the lot or curtilage whereon the same is erected, of any citizen and resident of this State, now or hereafter 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, who has ...[a] service-connected disability declared by the United States Veterans Administration or its successor to be a total or 100% permanent disability. . .shall be exempt from taxation on proper claim made therefore...

[N.J.S.A. 54:4-3.30(a); L. 1948.]

As originally enacted, section (b) of the statute extended the exemption to the "widow" of a deceased veteran if her husband was both entitled to, and actually receiving, the exemption on their jointly owned residence at the time of his death.

The extension of the exemption to the surviving spouse is said to "provide assurance to the veteran, the primary object of the Legislature's concern, that there will be some measure of economic relief when there is likely to be a special need for it." See Borough of Wrightstown v. Medved, 193 N.J. Super. 398, 402 (App. Div. 1984). In the context of a totally disabled veteran, where the potential for gainful employment is acutely lower, the necessity for such financial accommodation is especially significant. Id.

In 1977, the Legislature passed a bill implementing two significant changes to section (b). First, the deceased veteran would only have to have been entitled to, but not necessarily receiving, the exemption. Second, the widow could carry the exemption with her to any dwelling house she acquires with the requirement retained that she be residing in the dwelling house and not *be remarried* (emphasis added). See Senate Revenue, Finance and Appropriations Committee Statement, Senate No. 1789 – L. 1977, c. 377.

In 1985, the statute was further amended to replace gender specific language with gender-neutral language. As a result, N.J.S.A. 54:4-3.30 (b)(2), reads as follows:

The surviving spouse of any citizen and resident of this State who was honorably discharged and, after the citizen and resident's death, is declared to have suffered a service-connected disability as provided in subsection a. of this section, shall be entitled, on proper claim made therefor, to the same exemption the deceased would have become eligible for. The exemption shall continue *during the surviving spouse's widowhood or widowerhood*, as the case may be, and while a resident of this State, for the time that the surviving spouse is the legal owner thereof and actually occupies the dwelling house or any other dwelling house thereafter acquired.

[N.J.S.A. 54:4-3.30(b)(2) (emphasis added).]

Based on this statutory authority, the exemption extends to the surviving spouse<sup>15</sup> during widowhood or widowerhood. For the purpose of efficiency, the court will hereinafter use the term

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<sup>15</sup> The statutory definition of a surviving spouse is found in Title 54 Article 3, Rebates and Deductions, Veterans and Widows, and reads:

- (j) "Surviving spouse" means the surviving wife or husband of any of the following, while he or she is a resident of this State, during widowhood or widowerhood:
- **1.** A citizen and resident of this State who has died or shall die while on active duty in time of war in any branch of the Armed Forces of the United States; or
  - **2.** A citizen and resident of this State who has had or shall hereafter have active service in time of war in any branch of the Armed Forces

“widow” in reference to both a widow and widower, and the term “widowhood” to refer to widowhood and widowerhood.

There is no dispute that Plaintiff is the surviving spouse of Sgt. Pruent. The question is whether Plaintiff’s marriage to Mr. Stevens in 1993 permanently extinguished her “widowhood,” thereby making her ineligible for the exemption. The Exemption Statute does not define “widow” or “widowhood,” nor does it mention remarriage.

**b. Retroactive Determination of Ineligibility**

This court finds that the eligibility of a veteran or a veteran’s surviving spouse to qualify for the veterans’ property tax exemption commences when the VA determines the veteran’s 100% disability due to military service. This is a fair reading of the Constitution and the Exemption Statute, and complements the lack of a disabled veteran’s right to a retroactive refund due to the VA’s delay in making disability determinations.

In Del Priore v. Township of Edison, 26 N.J. Tax 502 (2012), aff’d, 2013 N.J. Super. Unpub. Lexis 1230 (App. Div.), certif. denied, 216 N.J. 363 (2013), the court denied a 100% disabled Vietnam veteran’s claim for a property tax refund retroactive to the effective date of his

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of the United States and who died or shall die while on active duty in a branch of the Armed Forces of the United States; or

- **3.** A citizen and resident of this State who has been or may hereafter be 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.  
[N.J.S.A. 54:4-8.10(j).]

disability.<sup>16</sup> The issue before the court was whether the Township's decision to change its policy of refunding local property taxes paid by an eligible veteran retroactive to the date of effective disability violated his guarantees of equal protection under the United States and New Jersey Constitutions.

In reaching its decision, the court found that:

The design of the Act is to exempt property as of the date an eligible veteran files a claim for exemption. *N.J.S.A. 54:4-3.30a* provides for the grant of the exemption "on proper claim made therefor." Further, the assessor is directed to "allow" the exemption upon the filing of a claim. *N.J.S.A. 54:4-3.32*. Accordingly, there is no statutory right to an exemption for any period preceding the filing of a claim.

[Id. at 514.]

The court further concluded that the Township's decision to change its prior policy (which was to grant fully retroactive refunds of taxes paid by eligible totally disabled veterans) had a rational basis and did not violate the Equal Protection Clause of the United States Constitution. The court found that "consistent with our Constitution, the intention of the Township Council was to balance in a fair way its obligations to qualified and eligible veterans with its obligation to be fiscally responsible and limit the tax burdens imposed on the remaining non-exempt taxpayers." Id. at 522.

Municipalities, counties, and schools depend on tax revenues to plan budgets and spend revenues and must do so in an efficient, transparent, and fully funded manner. Retroactive refunds can place an undue burden on the non-exempt taxpayers and divert much-needed funds from other

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<sup>16</sup> On April 20, 2006, the VA issued a letter setting forth its determination that Mr. Del Priore's wartime service-connected disability was totally disabling, and that the effective date of the disability was September 17, 1997.

obligations and commitments. Prospective exemptions, however, can be accounted for when creating the budget, and so no such argument applies here.

Given the above, it follows that the eligibility requirements for the exemption ought not to be retroactive either. It is both illogical and unfair to start the clock before the race has begun. The Constitution and the Legislature specifically referenced and included the VA's determination of 100% disability as an eligibility requirement for a tax exemption. It was not until February 12, 2014, that the VA determined that Sgt. Pruent was 100% disabled due to his military service. Accordingly, the Plaintiff's eligibility to apply for the veteran's property tax exemption as a surviving spouse did not commence until 2014. At the time she completed her application, she was the unmarried surviving spouse of Sgt. Pruent, and she qualified for the exemption.

**c. Constitutional and Statutory Meaning of “Widow” and “Widowhood”**

Notwithstanding the court's decision on retroactivity, the court will address the arguments presented by the parties with respect to the Constitution and the Legislature's use of the terms “widowhood” and “has not remarried” with respect to the veterans' exemption.

The terms “during the surviving spouse's widowhood” and “has not remarried” within the framework of the veteran's property tax exemption statutes are not defined. Does a woman cease to be a “widow” once remarried? Does “has not remarried” mean “is not remarried” or “unmarried” as in the present tense, so as to permit a suspension of the exemption during a remarriage? Or does it mean “has not ever remarried” in the past tense, resulting in the extinguishment of the exemption upon remarriage?

The rules of statutory construction require "consideration of [a statute's] plain language." Merin v. Maglaki, 126 N.J. 430, 434 (1992). See also Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123, 128 (1987); In re Plan for the Abolition of Council on Affordable

Hous., 214 N.J. 444, 467-68 (2013). If based upon a plain reading, the statutory language is "clear and unambiguous," the court must "implement the statute as written without resort to judicial interpretation, rules of construction, or extrinsic matters." Bergen Commercial Bank v. Sisler, 157 N.J. 188, 202 (1999) (quoting In re Estate of Post, 282 N.J. Super. 59, 72 (App. Div. 1995)). Conversely, if the "plain language of a statute creates uncertainties or ambiguities, a reviewing court must examine the legislative intent underlying the statute and construe the statute in a way that will best effectuate that intent." Musikoff v. Jay Parrino's the Mint, L.L.C., 172 N.J. 133, 140 (2002) (quoting New Jersey State League of Municipalities v. Department of Cmty. Affairs, 158 N.J. 211, 224 (1999)). It is of paramount importance for the court to effectuate "the 'fundamental purpose for which the legislation was enacted.'" Township of Pennsauken v. Schad, 160 N.J. 156, 170 (1999) (quoting New Jersey Builders, Owners and Managers Ass'n v. Blair, 60 N.J. 330, 338 (1972)).

In the taxation arena, when faced with an issue of statutory construction, the preferred "approach to [interpreting] the meaning of a tax statute is to give to the words used by the Legislature 'their generally accepted meaning, unless another or different meaning is expressly indicated.'" P.S.E. & G. Co. v. Township of Woodbridge, 73 N.J. 474, 478 (1977) (quoting New Jersey Power & Light Co. v. Township of Denville, 80 N.J. Super. 435, 440 (App. Div. 1963)). However, when the generally accepted meaning of a word or words cannot be determined, the courts "sole guidepost" must be to effectuate the intent of our Legislature. Ibid.

In determining the meaning of the statutory language at issue, the court first notes that the fundamental approach of New Jersey's property tax laws is that all property must bear its just share of the public responsibility of taxation. Our courts have long held that it is generally accepted that exemptions from local property taxation must be strictly construed because an exemption from

taxation is a departure from the equitable principle that all taxpayers should bear their just and equal share of the public burden of taxation. St. Luke's Village Inc. v. Borough of Peapack & Gladstone, 11 N.J. Tax 76, 80 (Tax 1990) (citing Princeton Univ. Press v. Borough of Princeton, 35 N.J. 209, 214 (1961)). Guided by this precedent, the court must determine whether the Legislature intended to permanently terminate qualification for the exemption upon a surviving spouse's remarriage.

Both the Constitution and the Exemption Statute require that the surviving spouse's entitlement to the exemption be during widowhood. The commencement of widowhood is the death of one's spouse. But when does it end? Does it cease to exist upon a surviving spouse's remarriage? Or is a widow a person as opposed to a marital status, and widowhood a time period that ends when the widow dies? Both concepts have historical roots in the law.

The Municipality argues that Plaintiff's marriage to Mr. Stevens permanently severs her status as Sgt. Pruent's widow. The Director, Division of Taxation ("Director") agrees. Both cite the Black's Law Dictionary definition of "widow" which reads "a woman whose husband has died and who has not remarried." See Black's Law Dictionary (Westlaw, 10<sup>th</sup> ed. 2014); see also 20 Oxford English Dictionary 319 (2d ed. 1989) (defining "widow" as "[a] woman whose husband is dead (and who has not married again)"). These dictionary references are consistent with Old English, Middle English, and Early Modern English vocabulary and were prominent in the context of property and inheritance rights involving curtesy and dower.

Modern English dictionary definitions are varied. Some maintain the definition cited above, but others do not. For example, the Merriam-Webster primary definition of "widow" reads "a woman who has lost her husband by death and usually has not remarried" See Merriam-Webster, <https://www.merriam-webster.com/dictionary/widow> (last visited Aug. 28, 2017); See



also Collins Dictionary, <https://www.collinsdictionary.com/us/dictionary/english/widow> (defining “widow” as “a woman who has survived her spouse, esp one who has not remarried”)(last visited Aug. 29, 2017).

Non-dictionary references are even more distinguishable. The United States Government in the context of Copyright Law offers this definition “The author’s “widow” or “widower” is the author’s surviving spouse under the laws of the author’s domicile at the time of his or her death, whether or not the spouse has later remarried.” See 17 U.S.C.S. 101 (2010).

The Attorney General of New Jersey interpreted the term “widow” in a Formal Opinion issued in 1960. The Formal Opinion provides:

A tax exemption is granted to a “widow...during her widowhood.” Const. Art. VIII, Sec. 1,Par. 3; N.J.S.A. 54:4-3.12i. Neither the statute nor the Constitution defines the phrase “widow ... during her widowhood.” Therefore in the absence of any indication of a contrary legislative intent, the phrase must be construed to have its usual and generally accepted meaning.

The term “widow” has been defined by judicial decisions as “a woman who has lost her husband by death and is still unmarried.” *Block v. P & G Realty Co.*, 96 N.J. Eq. 159,160 (Chan 1924). This legal definition of the term is in accordance with common usage. *See Montclair Trust Co v. Reynolds*, 141 N.J. Eq. 276, 279 (Chan. 1948). Therefore a taxpayer who would otherwise be entitled to a tax exemption as the widow of a war veteran loses her exemption upon remarriage, since she is no longer a widow. N.J.S.A. 54:4-312n expressly recognizes that the remarriage of a former widow terminates her widowhood and, therefore, also her exemption privilege.  
[Attorney General Formal Opinion 1960-7 (April 7, 1960).]

Although courts "are not bound to adopt the Attorney General's Formal Opinion as a correct statement of the law, it is nonetheless entitled to a degree of deference, in recognition of the Attorney General's special role as the sole legal advisor to most agencies of State Government, including the Treasury Department and the Division of Taxation." Quarto v. Adams, 395 N.J.

Super. 502, 513 (App. Div. 2007) (citing Peper v. Princeton Univ. Bd. of Trustees, 77 N.J. 55, 70, (1978) and Board of Educ. v. Board of Educ., 361 N.J. Super. 488, 494, (App. Div. 2003), certif. denied, 178 N.J. 454, (2004)).

Both the Municipality and the Director refer to N.J.S.A. 54:4-3.31 in support of their position that the exemption should be denied. That statute sets forth the documentation necessary to qualify for the exemption, and includes language that the applicant “has not remarried.” Added as an amendment in 1954, this implementing statute reads as follows:

In the case of a claim by a surviving spouse of such veteran, the claimant shall establish in writing under oath that the claimant is the owner of the legal title to the premises on which exemption is claimed; that the claimant occupies the dwelling house on said premises as the claimant’s legal residence in this State; that the veteran shall have been declared, either during the veteran’s lifetime or after the veteran’s death, by the United States Veterans Administration to have or to have had a service-connected disability of a character described in this act, or, in the case of a claim for an exemption under subsection c. of section 1 of P.L.1948, c.259 (C.54:4-3.30), that the veteran shall have been declared to have died in active service in time of war; that the veteran was entitled to an exemption provided for in this act, except for an exemption under paragraph (2) of subsection b. and subsection c. of section 1 hereof, at the time of death; and that the claimant is a resident of this State and *has not remarried*.

[N.J.S.A. 54:4-3.31 (emphasis added).]

The Municipality also cites N.J.S.A. 54:4-8.11, which entitles every war veteran, regardless of disability, and the surviving spouse of that veteran, to an annual deduction (as opposed to exemption) in property taxes. It is a provision within what this court will refer to as the “Veterans and Widows Act”, N.J.S.A. 54:4-8.10 to -8.24. The Municipality argues that the eligibility requirements of both the Veterans and Widows Act and the Exemption Statute mirror each other and, that at one time, both statutes had identical regulations promulgated by the Director that terminated the surviving spouse’s tax benefit upon remarriage, except in the instance of

annulment. The regulation for the Exemption Statute, however, expired in 2013. Nonetheless, the Municipality and the Director argue that the court should consider this an oversight, and give deference to the Veterans and Widows Act regulation.

Plaintiff argues that a woman who remarries always remains the widow of her husband. Plaintiff cites common law establishing that the legal status of a widow upon subsequent remarriage does not affect any vested rights she acquired before her remarriage. See Hansen v. The Brann & Stuart Co., 90 N.J.L. 444-447 (Sup. Ct. 1913); See also Edward B. Marks Music Corp. v. Borst Music Pub. Co., 110 F. Supp. 913, 918 (D. N.J. 1953).

Regarding the cases cited by the Municipality and the Director, Plaintiff argues that these cases do not support the Municipality's position. The Plaintiff points to the fact that the court in Block v. P & G Realty Co., 96 N.J. Eq. 159, 160 (Ch. 1924), cited the then existing "Standard Dictionary" for the principle that "[a] widow is ...a woman who has lost her husband by death and is still unmarried." Plaintiff argues that the focus of that definition appears to be on the status of the surviving spouse, as the phrase "is still unmarried" is distinct from the alternative "has never remarried".

A review of judicial authority in other states reveals that there are a substantial number of decisions in support of Plaintiff's interpretation of the term "widow", beginning in 1895 with the landmark case, In re Estate of Ray, 13 Misc. 480 (Sur. Ct. 1895).

Estate of Ray, *supra*, involved the interpretation of an inheritance tax statute exempting "the husband of a daughter" from transfer tax. Under the facts of that decision, the deceased testatrix had named her son-in-law a beneficiary in her will. The State of New York sought to hold the son-in-law liable for a transfer tax. The argument was that he was not "the husband of a daughter" within the statute because his wife, the former daughter of the testatrix, had predeceased

the testatrix. After the court interpreted the term "husband" to include a widower, the state argued that, based upon the dictionary definition of "widow," the son-in-law was no longer a widower because he had remarried. The court held:

[W]e are confronted with the definitions of the word 'widow' as stated in the various dictionaries, to-wit: an unmarried woman whose husband is dead; 'one who has lost her husband by death, and who has not taken another;' 'whose husband is dead, and who remains unmarried,' -- and by the argument, based on these definitions, that in order to be a widow she must remain unmarried. The question at issue is not whether these definitions are correct, but what is the legal import, meaning, effect, and object of the words 'wife or widow of a son' or 'husband of a daughter' as these words are used in this and other statutes of this state, or, if the language made use of to express the intention of those who prepared and passed the law is not clear, what construction will best accomplish the design. The fact that the statute itself has not made remarriage during the lifetime of the ancestor a bar to exemption from the tax is some evidence that it was not so intended to operate . . . A woman, though the wife of another, is still the widow of her former husband; though married to another woman, the husband is still the widower of his former wife; and, this being so, both come, not only within the language of the law, but within its just and reasonable construction. The law invests them with the name of 'husband' or 'wife' or 'widow' for certain legal purposes, and under these names, although the designation may not come within the definition of the dictionary property may vest in them, whether it comes to them by legacy or otherwise. Notwithstanding the definitions of the words 'wife', 'widow', and 'husband', we apprehend it is not our duty to accept the statutes of this state, which make use of these words, whether correctly or not, to designate persons entitled to certain legal rights.

[In re Estate of Ray, 13 Misc. 480, 484 (Sur. Ct. 1895).]

See also Duckett v. Kan. Soldiers' Comp. Bd., 66 P.2d 410 (Kan. 1937) (in the context of the entitlement of a remarried widow to the Veteran's bonus benefits of the deceased first husband, the court, after refusing to adopt a marital status definition of widow, set out at length a substantial number of decisions holding the term "widow" to designate the person); Dell'Aquila v. Chapman, 98 N.E.2d 588 (N.Y. 1951) (in the context of the entitlement of a remarried widow to the Veteran's bonus benefits of the deceased first husband, court held that "[i]n the absence of a specific provision that a widow who remarries loses her rights as widow, the great weight of authority throughout the country is in favor of interpreting the term "widow" in statutes as designating the

person and not the continued marital status of that person.”); In re Estate of Souder, 421 N.E. 2d 12 (Ind. App. 1981) (holding that remarriage does not change a transferee's relationship as "widow . . . of a child of the transferor" for the purposes of Indiana inheritance tax) Id. at 14; Henderson Police & Fireman Pension Bd. v. Riley, 674 S.W. 2d 27 (Ky. Ct. App. 1984) (court awarded unpaid accrued pension benefits plus interest on the basis that claimant resumed her “surviving spouse” status under the Police and Fireman’s pension plans upon dissolution of her second marriage by divorce); and Bd. of Trs. of Police & Firemen's Ret. Fund v. Kennedy, 547 So. 2d 886 (Ala. Civ. App. 1989) (The court held that the widow was entitled to resume receiving pension benefits, and a subsequent marriage did not forever terminate her right to receive benefits. The court found that the term "widow" in the retirement fund act was not specifically defined but simply designated who was to receive the pension benefits and was not a particular marital status and that "unmarried widow" told when the widow was eligible to receive such benefits).

In contradiction to the Municipality’s interpretation of “widow,” both the Division of Taxation and the Office of Legislative Services have publicly disseminated information on the veterans’ exemption and deduction, of which a fair reading would indicate that it is the present, not past, status of the surviving spouse that qualifies.

On its website, The Division of Taxation’s brochure, revised as recently as May of 2016, states as follows:

**FULL PROPERTY TAX EXEMPTION FOR 100% DISABLED VETERANS OR SURVIVING SPOUSES** *N.J.S.A. 54:4-3.30 et seq.*

100% permanently and totally disabled war veterans or the *unmarried surviving spouses* of such disabled war veterans are granted a full property tax exemption on their dwelling house and the lot on which it is situated. To qualify, you must be an honorably discharged disabled veteran who had active service in time of war in the US Armed Forces, *or the unmarried surviving spouse of such*

*a disabled veteran. Unmarried surviving spouses* of service persons who died in active service in time of war also qualify. Wartime service connected disability must be certified by the US Department of Veterans Affairs (VA.) You must be the full or partial owner and a permanent resident in the dwelling and legal resident of New Jersey. In the case of surviving spouses, the deceased spouse must also have been a legal resident of New Jersey. Claim Form D.V.S.S.E. must be filed with your municipal tax assessor.

[Brochure on Property Tax Exemptions, New Jersey Division of Taxation (last visited July 7, 2017) <http://www.state.nj.us/treasury/taxation/pdf/lpt/ptbenefitsbrochure.pdf> (emphasis added).]

Based on this language, Plaintiff qualifies for the exemption because she is both unmarried and the surviving spouse of a 100% permanently and totally disabled war veteran.

The New Jersey State Legislature, Office of Legislative Services, published Background Report number 12, The Veterans' Property Tax Exemption on September 22, 2005. In that report under the heading "Qualifications For Eligibility To Receive Veterans Property Tax Deduction" it states the following:

A qualified surviving spouse of a veteran is one who is unmarried, a resident of New Jersey and who has an ownership interest in the property for which the deduction is sought.

Furthermore, on page 6 of the report under the heading "Surviving Spouses" it reads:

If a deceased war veteran is qualified to receive a property tax deduction at the time of death, eligibility status inures to the surviving spouse if all of the foregoing requirements are satisfied. The...

- widow or widower must not be remarried

[N.J. State Legislature Office of Legislative Services, Background Report No. 12, The Veterans' Property Tax Deduction (September 22, 2015).]

Both of these online publications refer to remarriage in the present tense as opposed to the past tense.

While the Exemption Statute does not define widow or widowhood, other unrelated New Jersey statutes do contain such a definition, and a statutory scheme for the termination of a widow's benefits. Specifically, the court finds guidance in the Legislature's definition of "widow" as it pertains to the Teachers' Pension and Annuity Fund, N.J.S.A. 18A:66-2(u), which reads in pertinent part:

"Widow," for employees of the State, means the woman to whom a member was married, or a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), at least five years before the date of his death and to whom he continued to be married or a domestic partner until the date of his death and who was receiving at least one-half of her support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. *The dependency of such a widow will be considered terminated by the marriage of, or establishment of a domestic partnership by, the widow subsequent to the member's death. ...*

[N.J.S.A. 18A:66-2(u)(1) (emphasis added).]

By including the phrase "the dependency of such a widow shall be considered terminated by the marriage of the widow subsequent to the member's death," the Legislature defined a widow as a person, not as a marital status. Adopting this approach, a "widow" is always the widow of her deceased spouse until she herself dies. It is the benefit that terminates upon remarriage, not widowhood.

Similarly, the language used by the Legislature when adopting a definition of "widow" in the Judicial Retirement System statute separates the person of the widow from the termination of the entitlement. N.J.S.A. 43:6A-3t states:

"Widow" means the woman to whom a member or a retirant was married, or a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), at least four years before the date of his death and to whom he continued to be married or a domestic partner until the date of his death. *The eligibility of such a widow to receive a survivor's benefit will be considered terminated by the*

*marriage of, or establishment of a domestic partnership by, the widow subsequent to the member's or the retirant's death.* In the event of accidental death the four-year qualification shall be waived. When used in this act, the term “widow” shall mean and include “widower” as may be necessary and appropriate to the particular situation.

[N.J.S.A. 43:6A-3t (emphasis added).]

The language used by the Legislature in N.J.S.A. 18A:66-2(u) and N.J.S.A. 43:6A-3t is clear and unambiguous – to wit – remarriage extinguishes entitlement to the pension not widowhood.

No such clarity exists in the Exemption Statute. The use of the term “has not remarried” in the implementing statute can be interpreted as requesting present status (is not remarried) or historical status (has not ever remarried). Ambiguity exists when a statute is capable of being understood by reasonably well-informed persons in two or more different senses. See Sutherland Stat. Const. § 45.02 (5th ed. 1992).

Had the Legislature wished to permanently extinguish a surviving spouse’s right to benefits upon remarriage it could have employed language expressly effecting such a result, as it did in N.J.S.A. 18A:66-2 and N.J.S.A. 43:6A-3t. Thus the refusal to employ such language in N.J.S.A. 54:4-3.30(b)(2) convinces the court that the Legislature did not intend such restrictions under the Exemption Statute. It is a basic canon of statutory construction that *expressio unius est exclusion alterius* (expression of one thing is the exclusion of another) See Sutherland Stat. Const. § 47.23 (5th ed. 1992). In her book on the topic, Canadian jurist Ruth Sullivan wrote:

An implied exclusion argument lies whenever there is reason to believe that if the legislature had meant to include a particular thing within the ambit of its legislation, it would have referred to that thing expressly. Because of this expectation, the legislature’s failure to mention the thing becomes grounds for inferring that it was deliberately excluded. Although there is no express exclusion, exclusion is implied.



[Ruth Sullivan, Driedger on the Construction of Statutes, 168 (3d ed. 1994).]

The court also finds support for the argument that the Exemption Statute refers to present marital status in the Senate Revenue, Finance and Appropriations Committee Statement, Senate No. 1789 – L. 1977, c. 377, which specifically states “with the requirement retained that she be residing in the dwelling house and not remarried.”

Regarding Attorney General Formal Opinion 1960-07, the court rejects it as not being compatible with legislative intent. First, the Block case cited in the opinion is a 1924 dower case, and the definition of the term widow comes from the then-existing Standard Dictionary. Second, the statutory section cited, N.J.S.A. 54:4-312n, was repealed in 1963. Third, and most significantly, the Legislature has designated the term “widow” as a person, not a marital status.

The Municipality argues that “restricting the inquiry to a surviving spouse’s current status, while ignoring past marriages, raises exactly the spectre of multiple widowhoods that the Attorney general fears, creating a situation where individuals could slip into and out of eligible widow or widowhood multiple times over the course of decades, not only increasing the opportunity for fraud, but also making the benefit a nightmare for Tax Assessor’s to administer.” The court finds this argument unpersuasive. The assessor is charged with making an annual, as of October 1, examination of all veterans’ deduction and exemption claims for the purpose of determining for changes in NJ domicile or legal residence in this state, property ownership, and marital status. The court finds no additional burden than what already exists.

A court cannot make legislative policy. See Gately v. Hamilton Memorial Home, Inc., 442 N.J. Super. 542, 559 (App. Div. 2015) (“we defer to the democratic authority of the Legislature, as well as the administrative expertise of the [Department], to consider the wisdom of amending the statutes and regulations . . . .”) See also Lourdes Medical Center v. Bd. of Review, 197 N.J.

339, 366 (2009) ("We cannot interfere with the policy choices made by the Legislature. If the Legislature wishes to enact a different standard . . . it is free to do so.")(citation omitted).

If the policy of the New Jersey Legislature is as the Municipality argues, that the surviving spouse's remarriage forever terminates the right to the veterans exemption, it can amend the statute to explicitly state it. Alternatively, if the Legislature's policy is to provide the exemption during the periods when the surviving spouse is not married, it can erase any ambiguity by adopting such language. The Wisconsin Legislature did just that when it amended its exemption statute for taxable years beginning after December 31, 2013 to define an "eligible unremarried surviving spouse" to specifically include individuals who are eligible for, and receive, DIC benefits from the federal government.<sup>17</sup>

Finally, the court finds that the history of veterans and their exposure to toxic herbicides, compounded by the inordinate delays by the VA in processing their claims, created a situation that was unforeseeable by the drafters of the constitutional provision and statutes implemented to protect New Jersey's disabled veterans and their families. Notwithstanding this lack of foreseeability, both the Constitution and the Exemption Statute include a mechanism for addressing a veteran's eligibility for the exemption despite what could not have been anticipated when the language was drafted. By requiring a determination by the VA of 100% disability to

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<sup>17</sup> The applicable Wisconsin statute reads "Eligible unremarried surviving spouse" means an unremarried surviving spouse of one of the following, as verified by the department of veterans affairs: ... d. An individual who had served on active duty under honorable conditions in the U.S. armed forces or in forces incorporated as part of the U.S. armed forces; who was a resident of this state at the time of entry into that active service or who had been a resident of this state for any consecutive 5-year period after entry into that active duty service; who was a resident of this state at the time of his or her death; and following the individual's death, his or her spouse began to receive, and continues to receive, dependency and indemnity compensation, as defined in 38 U.S.C. 101 (14). See Wis. Stat. § 71.07 (6e)(a)(2)(d).

qualify for the exemption, the Legislature built in deference to that entity and its classification of veterans and their surviving spouses. Thus, the court finds that the VA's identification of Plaintiff as an "unremarried surviving spouse" is the qualification the Legislature intended when implementing the Exemption Statute. Plaintiff's situation is exactly the scenario that the laws creating veterans benefits were meant to address.

### **III. Conclusion**

The court concludes that the terms "widow" and "widower" refer to a person and not a marital status. The surviving spouse of a 100% disabled veteran is eligible for the exemption if he or she meets the requirements set forth in N.J.S.A. 54:4-3.31, which includes a certification that the surviving spouse "has not remarried." The court concludes that there is sufficient ambiguity as to whether this term indicates a present marital status or an event that has occurred in the past. Based on the language used by both the Division of Taxation and the Office of Legislative Services in their respective brochure and report, the court concludes that the term "has not remarried" is intended to refer to a present marital status. Accordingly, the surviving spouse's exemption is available only during periods when the surviving spouse is not married.

The court also concludes that that fundamental fairness and reasonableness require that consideration of a surviving spouse's marital status should not commence until the VA has determined the veteran's 100% disability. If at that time the surviving spouse is unmarried, the eligibility requirement has been met.

In consideration of the above, this court finds that Plaintiff has met the statutory requirements for a veteran's property tax exemption on her residence for tax year 2016.

The Honorable Michael J. Gilmore, J.T.C., did not participate in the Court's decision to publish this Opinion.