NOT FOR PUBLICATION WITHOUT APPROVAL OF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

RONALD BENTZ, Plaintiff, v. TOWNSHIP OF LITTLE EGG HARBOR, Defendant.	:	TAX COURT OF NEW JERSEY DOCKET NO. 009763-2017 Approved for Publication In the New Jersey Tax Court Reports

Decided: July 25, 2018

Ronald Bentz, plaintiff (self-represented).

Robin La Bue for defendant
(Gilmore & Monahan, P.A., attorneys).

Stephen J. Colby for Intervenor, Director, Division of Taxation
(Gurbir S. Grewal, Attorney General of New Jersey, attorney).

SUNDAR, J.T.C.

This constitutes the court's opinion in connection with the above captioned matter wherein plaintiff ("Mr. Bentz") seeks an exemption from local property tax on his residence located in defendant, Township of Little Egg Harbor ("Township") for tax year 2017, on grounds that he is a disabled veteran. The Township denied the exemption because Mr. Bentz's naval service in Libya during 1986 is not enumerated in the definition "active service in time of war" in N.J.S.A. 54:4-8.10(a). Mr. Bentz argues that the statute's failure to include Libya is unconstitutional when it is undisputed that there was a conflict in Libya in 1986.

For the reasons stated below, the court finds that the Legislature has, pursuant to constitutional delegation, limited the veterans' local property tax exemption and deduction to statutorily defined conflicts and operations, which does not include Libya. This court cannot

*

engraft a conflict which has not been designated by the Legislature. The complaint is therefore dismissed.

PROCEDURAL HISTORY AND FACTS

The following facts are undisputed. Mr. Bentz served in the U.S. Navy from September 6, 1983 to September 5, 1986. He was stationed in Libya (on a ship) during 1986 for a period of 96 days during which there was a conflict between Libya and the United States. He was thereafter honorably discharged. His discharge certificate reflects that he was in "sea service."

Mr. Bentz was eligible for a Navy Expeditionary Medal for his service in Libya during the period of March 21, 1986 to June 27, 1986; a Navy Unit Commendation Ribbon for his service during the period March 23, 1986 to April 17, 1986; and a Meritorious Unit Commendation Ribbon for his service during the period August 29, 1985 to September 20, 1985. He was also awarded a "sea service deployment ribbon w/1 star."

Effective September 6, 2016, Mr. Bentz was declared as 100% permanently disabled due to a "wartime service-connected disability" by the federal Department of Veterans Administration ("VA").

On April 17, 2017, Mr. Bentz filed an application (Form D.V.S.S.E. "Claim for Property Tax Exemption on Dwelling House of Disabled Veteran or Surviving Spouse/Surviving Domestic Partner of Disabled Veteran or Serviceperson") with the Township's assessor seeking local property tax exemption on his residence on grounds he was an "[h]onorably discharged disabled veteran with active wartime service" in the U.S. Navy. Therein, he claimed his wartime services to be the "Lebanon Peacekeeping Mission" from September 26, 1982 to December 1, 1987.

By notice dated April 25, 2017, the Township's assessor/collector disallowed Mr. Bentz's application for "a veteran's property tax deduction/disabled veteran's property tax exemption."

The reasons were a failure to meet two statutory requirements: (1) "Active Duty in a qualified branch of the" U.S. Armed Forces "'in time of war;'" and, (2) "Peacekeeping Missions require a minimum of 14 days service in the actual combat zone."

Mr. Bentz petitioned the Ocean County Board of Taxation ("County Board") challenging the exemption denial. The County Board affirmed the denial, which resulted in the affirmance of the 2017 local property tax assessment of $229,100 upon Mr. Bentz's residence.

While the County Board petition was pending, the New Jersey Division of Taxation ("Taxation") advised Mr. Bentz and the Township's tax collector that the tax collector had erroneously granted and paid Mr. Bentz $250 as a veteran's property tax deduction from 1997 to 2017. The payment was in error because "based on the information provided," Mr. Bentz "did not meet the statutory requirements for qualifying war service." Taxation advised that it would seek a refund of a total of $4,350 from the Township.

Mr. Bentz then filed a complaint with this court challenging the County Board's judgment. He contended that the exclusion of Libya in N.J.S.A. 54:4-8.10(a) denies him equal protection and violates the Supremacy Clause. The court treated his pleadings as requesting summary judgment since the facts were undisputed. At the court's direction, Mr. Bentz provided notice, and served a copy of his complaint and pleadings, to the Attorney General of New Jersey. Thereafter, Taxation, through the Attorney General, moved to intervene to defend the constitutionality of N.J.S.A. 54:4-8.10(a). The court then conducted oral argument.

FINDINGS

(A) Motion to Intervene

Rule 4:28-4(d) provides that when a motion to intervene is filed by a State agency, the same "shall be freely granted for good cause and in the interests of justice." Mr. Bentz challenges the constitutionality of N.J.S.A. 54:4-8.10(a), a taxing statute, the enforcement and oversight of which is entrusted to Taxation, although procedurally administered by the taxing district. See generally N.J.S.A. 54:4-8.13; 4-8.19; N.J.A.C. 18:27-2.22. The court therefore finds good cause exists to grant Taxation's motion to intervene.

(B) Veteran's Tax Exemption

Our Constitution allows real property owned by veterans to benefit from special local property tax treatment.[1] In 1947, it provided as follows:

> 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 may be provided by law.
>
> [N.J. Const. art. VIII, § 1, ¶ 3 (emphasis added).]

Thus, a veteran who was honorably discharged "from active service in time of war" was entitled to a $500 exemption from local property tax, and also to any additional exemption

[1] "A specific provision for veterans had to be written into the constitution since that was a classification by status, not use." N.J. State League of Municipalities v. Kimmelman, 105 N.J. 422, 432 (1987). "Such a classification does not contravene the Equal Protection Clause of the United States Constitution." Garma v. Twp of Lakewood, 14 N.J. Tax 1, 11 (Tax 1994).

provided by the Legislature "from time to time," as long as the veteran had a service-connected disability as determined by the VA.

In response, in 1948, the Legislature first enacted N.J.S.A. 54:4-3.30 (hereinafter the "Exemption Statute") granting a 100% tax exemption for a residence owned by a veteran who was discharged "from active service, in time of war," and suffered a "service-connected disability," or was determined by the VA to be 100% permanently disabled due to military service. The Exemption Statute did not define the term "in time of war." However, Taxation promulgated regulations, which among others, specified that a claimant must "conclusively establish that his service in the armed forces was in 'time of war.'" See Dept. of Treasury, Div. of Taxation, Regulations Governing the Disposition of Applications of Veterans with Service Connected Disabilities of the Character Specified in C. 259, Laws of 1948 for Exemption of Residence Property from General Property Taxation, ¶ 7 (Oct. 1, 1948).[2] Service during the Civil War, War with Spain, and both World Wars was "deemed sufficient" proof that the veteran satisfied the "in time of war" requirement. Ibid. The regulation noted that "[i]n using the phrase 'in time of war,' it is believed that the framers of the Constitution of 1947 and the Legislature intended to specify only periods of actual conflict." Ibid.

In 1951, the Legislature enacted another statute to provide the constitutionally granted $500 exemption for all veterans, not just those who were 100% disabled. See N.J.S.A. 54:4-3.12 (now repealed). In this statute, the Legislature identified certain wars for purposes of the requirement that a veteran have been in active service "in time of war." Taxation's interpretive regulations in this regard, also provided a restrictive meaning to the phrase "in time of war." See Dept. of

[2] "These regulations were not published in the Administrative Code or New Jersey Register" but are "on file in the Office of Administrative Law." Twp. of Dover v. Scurozo, 392 N.J. Super. 466, 473 n.3 (App. Div. 2007).

Treasury, Div. of Taxation, Regulations Governing the Disposition of Applications by Associations Organizations and Corporations for Exemption of Real Property Under C. 135, L. 1951 (N.J.S.A. 54:4-4.4), ¶ 6 (Aug. 1, 1951). Listing both World Wars, the Spanish-American War and the Civil War for purposes of the "in time of war" requirement, the regulation noted that if service was in any branch of the armed forces, but "during a rebellion, insurrection, or other military or naval incident, short of war," then the exemption was not available pursuant to the 1947 Constitution. Ibid. In contrast, the regulation attributed a broad meaning to the length of service by noting that "[a]ny service in the Armed Forces in time of war, no matter how brief, is sufficient" because neither the Constitution nor the statute "prescribe[] the length of time" of service. Ibid.

Pursuant to a 1952 legislative amendment, Taxation subsequently expanded the definition of "time of war" to include a specified period of the Korean conflict.[3]

In 1953, our Constitution was amended (effective 1954) to expand the tax benefits to veterans honorably discharged from active service as follows:

> Any citizen and resident of this State now or hereafter honorably discharged or released under honorable circumstances from active service, in time of war or of other emergency as, from time to time, defined by the Legislature . . . .
>
> [N.J. Const. art. VIII, § 1, ¶ 3 (emphasis added).][4]

[3] The period was from June 23, 1950 until termination of the Presidential proclamation of the "existence" of a "[n]ational emergency" on December 16, 1950, or termination "by appropriate action of the President or Congress of the United States." See Dept. of Treasury, Div. of Taxation Regulations Governing the Disposition of Disabled Veterans' Applications for Exemption of Residence Properties under C. 259, Laws of 1948, as Amended by C. 172, Laws of 1949, C. 200, Laws of 1951 and C. 233, Laws of 1952 (N.J.S.A. 54:4-3.30, et seq.), ¶ 5 (Oct. 1, 1952).

[4] Taxation's regulations in this connection reproduced the constitutional amendments, and recite it as reproduced above. The current version of the constitutional provision does not contain the word "of" thus reads, "in time of war or other emergency."

This constitutional amendment also extended benefits to the surviving spouse of such a veteran. Ibid. See also L. 1953, c. 436 (effective 1954); Dept. of Treasury, Div. of Taxation, Regulations for the Guidance of Assessors and Collectors in the Disposition of Applications by Veterans, Widows of Veterans and Widows of Certain Servicemen for Exemption from Taxation of Real and Personal Property Under Article VIII, Section 1, Paragraph 3 of the New Jersey Constitution of 1947, as Amended, and Chapter 436, Laws of 1953 (Jan. 1, 1954).

Subsequent constitutional amendments, as relevant here, changed the $500 exemption amount to a "deduction" of a certain amount (currently $250) to all veterans. In 1963, the $500 exemption statute was repealed and replaced by N.J.S.A. 54:4-8.10 to -8.23 (see L. 1963, c. 171). The constitutionally permitted deduction amount replaced the $500 exemption. See N.J.S.A. 54:4-8.11 (hereinafter the "Deduction Statute"). N.J.S.A. 54:4-8.10 defined, among other terms, the phrase "[a]ctive service in time of war," to include certain periods of specified conflicts and wars. See N.J.S.A. 54:4-8.10(a) (hereinafter "Definitional Statute"). As enacted in 1963, the phrase "[a]ctive service in time of war" continued to identify the Korean conflict, both World Wars, the Spanish American War, and the Civil War, and included "as to any subsequent war, during the period from the date of declaration of war to the date on which actual hostilities shall cease." See L. 1963, c. 171.

Since 1963, the Definitional Statute has been amended to include other conflicts. Currently it enumerates 17 such "periods," and one catch-all provision to address future wars.[5] In contrast

[5] Initially, a separate section was enacted in 1965 to provide a deduction for Vietnam Veterans. N.J.S.A. 54:4-8.11a. N.J.S.A. 54:4-8.11b defined active service in the southeast Asia area of warlike conditions. Both provisions were repealed in 1972 because the Vietnam conflict was now included in the Definitional Statute.

Per the Definitional Statute, the "time of war" includes: (1) Operation Iraqi Freedom; (2) the September 11, 2001 terrorist attack in New York; (9/11/01 to 5/30/02); (3) Operation Enduring Freedom (post 9/11/01); (4) Operation Restore Hope in Somalia (post 12/5/92); (5) Operations

to its prior narrow interpretations of the phrase "time of war," Taxation's regulations as to the $250 deduction now simply cross-reference the Definitional Statute. See N.J.A.C. 18:27-1.1 (defining "Active service in time of war" as "some time during one of the periods defined in N.J.S.A. 54:4-8.10(a),"); N.J.A.C. 18:27-2.2(e) (the Deduction Statute "requires" veterans "have had 'active service in time of war,'" therefore, an applicant "must clearly establish that the service performed was during one of the periods specified in N.J.S.A. 54:4-8.10(a)," and "[a]ssessors and collectors should carefully examine the service record (Form DD-214) to verify that service was performed in a statutory specified period").

In 1971, the Legislature defined the term "active service in time of war" for purposes of the Exemption Statute. It did this by incorporating the Definitional Statute as it then existed, into the Exemption Statute. See L. 1971, c. 398; N.J.S.A. 54:4-3.33a.[6] Taxation's regulation in this

---

Joint Endeavor and Joint Guard in Bosnia and Herzegovina (post 11/20/95); (6) Operations Northern and Southern Watch (post 8/27/92); (7) Operation Desert Shield/Desert Storm (post 8/2/90); (8) The Panama Peacekeeping Mission (post 12/20/89 if earlier than date of inception); (9) The Grenada Peacekeeping Mission (post 10/23/83); (10) The Lebanon Peacekeeping Mission (post 9/26/82); (11) The Vietnam conflict; (12) The Lebanon crisis; (13) The Korean conflict; (14) World War II; (15) World War I; (16) Spanish-American War; and, (17) Civil War, (18) "or as to any subsequent war, during the period from the date of declaration of war to the date on which actual hostilities shall cease."

[6] An exception was as to World War II, wherein active service is defined as during the period 12/7/41 to 12/31/46, see N.J.S.A. 54:4-3.33a, not 9/16/40 to 12/31/46 as set forth in the Definitional Statute.

The proposed bill (A. 609) was returned with a conditional veto. See Governor's Veto Statement to A. 609 (Nov. 15, 1971). The Governor opined that "[t]he exemption should extend to all 100% service-incurred disabilities and not be limited to a specific few," therefore, the bill improperly did not "provide the exemption for disabled veterans of the Vietnam conflict" when they should be included. Id. The veto also disagreed with the proposal that the exemption was being conditioned upon an income or earning test limit (proposed at $5,000) because this was "arbitrary and does not comport with the aim of the [proposed legislation] to broaden the area of tax exemptions for disabled veterans." Ibid. The veto recommended inclusion of Vietnam veterans by referencing the current law which did include such veterans (L. 1965, c. 165; N.J.S.A. 54:4-8.11a; 4-8.11b, now repealed), and deletion of the $5,000 income limit. Governor's Veto

regard simply states that 100% "permanently and totally disabled war veterans . . . [who] are honorably discharged . . . from active service in time of war, are granted a full real property tax exemption on their dwelling house and the lot on which it is situated." N.J.A.C. 18:28-2.1.

(C) Conflict in Libya

On January 7, 1986, the President of the United States issued an Executive Order ("EO") that "the policies and actions" of the Libyan Government "constitute[d] an unusual and extraordinary threat to the national security and foreign policy" of our country, requiring him to "declare a national emergency to deal with that threat." See Exec. Order No. 12543, 51 Fed. Reg. 875 (Jan. 9, 1986) (citing among others, the National Emergencies Act, 50 U.S.C. § 1601 et seq., as justification for the EO). The EO ordered economic embargoes such as prohibition of import, export, purchase, sale to/from Libya. Ibid.

There was also an air battle with Libyan forces involving the U.S. Navy and our Armed Forces in early 1986. See Christopher M. Blanchard, Cong. Research Serv., IB93109, Libya (June 14, 2005) (the "Air and Sea Battle" in 1986 commenced with the U.S. Navy while at "a naval exercise" in January 1986 "in the Mediterranean north of the Gulf of Sidra," with the conflict continuing into April with air-strikes by both countries, including the sinking of four Libyan boats "which approached the U.S. ships." The air-strikes resulted in two U.S. military officers being killed when their "F-111 was shot down"). See also Authority of the President Under Domestic and International Law to Use Military Force Against Iraq, 26 Op. O.L.C. 143, 187-189 (2002) (summarizing the April 1986 air-strike against Libya as one being justified by President Reagan under "the doctrine of anticipatory self-defense" prompted by a bomb-attack of a discotheque in

---

Statement to A. 609. Both these recommendations were adopted by the Legislature. See Assembly Amendments to A. 609 (Nov. 15, 1971).

Berlin, Germany "which was frequented by U.S. military personnel,"); Barbara Salazar Torreon, Cong. Research Serv., RS42738, Instances of Use of United States Armed Forces Abroad 1798-2017, (2017) (President's report that in March 1986, U.S. Armed Forces "while engaged in freedom of navigation exercises around the Gulf of Sidra" were "attacked by Libyan missiles" requiring a like response from the U.S., and in April of 1986, "U.S. air and naval forces had conducted bombing strikes on terrorist facilities and military installations in Libya"). Thus, by Proclamation No. 5473, 51 Fed. Reg. 17311 (May 12, 1986), the President honored the naval aviators, noting that the "courage and professionalism of these dedicated men and women were . . . demonstrated vividly during the anti-terrorist strikes conducted in Libya a few weeks ago."[7]

(D) Non-Inclusion of Libya in the Definitional Statute

Libya is not included in the Definitional Statute. There are policy reasons why this non-inclusion is problematic. The benefit of a local property tax deduction and/or exemption is a social recognition that our veterans, who put their lives at risk for our nation, merit some economic recognition for their valuable contribution. As stated in Darnell v. Twp. of Moorestown, 167 N.J. Super. 16, 18 (App. Div. 1979), "[t]he intent of the framers of [the] . . . [exemption] provision [in our Constitution] was to mandate statutory property tax relief to compensate veterans for the experiences of war and to encourage veterans to purchase property in this State." The court noted

[7] EO 12543 was extended annually by other EOs barring economic relations with Libya, and blocking Libyan assets in the United States, until it was terminated in 2004. See e.g. Prohibiting Trade and Certain Transactions Involving Libya, 51 Fed. Reg. 875 (Jan. 9, 1986); Blocking Libyan Government Property in the United States or Held by U.S. Persons, 51 Fed. Reg. 1235 (Jan. 10, 1986); Termination of Emergency Declared in Executive Order 12543 with Respect to the Policies and Actions of the Orders, 69 Fed. Reg. 56665 (Sep. 22, 2004). Another emergency was declared in 2011 because of the violence caused by the Libyan government to its own citizens, and is ongoing. See Blocking Property and Prohibiting Certain Transactions Related to Libya, 76 Fed. Reg. 11315 (March 2, 2011); Continuation the National Emergency with Respect to Libya, 83 Fed. Reg. 6105 (Feb. 12, 2018).

that the "philosophy" which "motivated the New Jersey constitutional amendment and statutory implementation of the veterans' deduction [was] for compensating war veterans and encouraging their adjustment to civilian life." Id. at 21. The local property tax exemption is intended to provide "some measure of economic relief" to the veteran, and in "the case of a totally disabled veteran, who is probably not gainfully employed, the need is likely to be especially acute." Borough of Wrightstown v. Medved, 193 N.J. Super. 398, 402-403 (App. Div. 1984), rev'g 4 N.J. Tax 582 (Tax 1982). Cf. Governor's Press Release, Veterans of Iraq and Afghanistan Made Eligible (Dec. 17, 2003) ("The brave men and women returning from the war against terrorism in Iraq or Afghanistan risked their lives for our Nation. Extending veterans' benefits to these individuals is a tangible symbol of our appreciation. New Jersey will never forget their sacrifices," and it is our "moral obligation to help those who defend our freedom.").

Pursuant to these policy reasons, Mr. Bentz, who physically participated in the naval combat and witnessed U.S. Armed Forces planes being shot down, and who was declared by the VA to be 100% permanently disabled, is fully deserving of our nation and society's gratitude.

Against this policy argument, however, is a superseding controlling principle: the separation of powers doctrine bars judicial interference in legislative functions. Our Constitution delegated the Legislature with the sole discretion to define a "time of war," as well as a time of "other emergency," as evident from placement of the comma in the delegatory sentence. See Morella v. Grand Union/N.J. Self-Insurers Guar. Ass'n, 391 N.J. Super. 231, 240-241 (App. Div. 2007), aff'd, 193 N.J. 350 (2008) (the "general rule of statutory construction is that a modifying phrase applies to the last antecedent phrase, absent contrary intent," but "the use of a 'comma' to separate a modifier from an antecedent phrase indicates an intent to apply the modifier to all

previous antecedent phrases."). The Legislature is thus empowered to define what constitutes a war or an emergency, which it has by identifying specific periods and specific instances.

It is not this court's place to include Libya as a "time of war" or as a time "of other emergency" in the Definitional Statute. That prerogative is exclusively vested with the Legislature by our Constitution. Although this court does not question Mr. Bentz's honorable military service in defending the nation in foreign waters against hostile forces under war-like or conflict-like conditions, it cannot step into the Legislature's shoes and include Libya in the Definitional Statute without violating the doctrine of separation of powers.

Of course, the court can examine if in the performance of the constitutionally delegated powers, the Legislature violated the Constitution. For instance, if the exclusion of Libya was after due deliberation, then the court can examine the validity of the reasons behind the exclusion. Here, there is no evidence of a deliberated exclusion. Nonetheless, the court cannot second-guess a legislative decision or policy. The Legislature's exercise of its delegated power will not be presumed to have been undertaken lightly or arbitrarily. Medved, 4 N.J. Tax at 587 ("the accepted rule is that a statute is presumed to be constitutional and that a court should exercise sparingly the power to declare a statute unconstitutional," thus a "tax" statute's "validity must be upheld," unless it "is so clearly in contravention of the Constitution that there can be no reasonable doubt about it,") (citations and internal quotations marks omitted); Garma, 14 N.J. Tax at 19 (court cannot "create an entirely new class of persons who are entitled to the exemption from local property taxation" because "[t]o extend an exemption to other than those plainly and unmistakably within its terms and spirit is to abuse the interpretive process and to frustrate the announced will of the people.") (citations and internal quotations marks omitted).

Our Legislature has not abdicated its constitutionally delegated powers, as is evident in the Definitional Statute and its amendments "from time to time." See e.g. Fisher v. City of Millville, 450 N.J. Super. 610, 616-17 (App. Div. 2017) ("The Legislature [has] listed sixteen separate military conflicts . . . within the definition of '[a]ctive service in time of war,' to discern eligibility of disabled veterans seeking tax exemptions and deductions," and the periodic additions "expanded benefits to veterans disabled in designated military conflicts, keeping step with the Constitution's amendment to authorize Legislation covering events 'in time of war or other emergency.'"), aff'g 29 N.J. Tax 91 (Tax 2016), certif. denied, 231 N.J. 149 (2017).

Many an article has been penned on what comprises a war. See e.g. Joseph Romero, Of War and Punishment: "Time of War" in Military Jurisprudence and a Call for Congress to Define its Meaning, 51 Naval L. Rev. 1 (2005). See also 16 Op. N.J. Att'y Gen. (Sep. 18, 1956) (the Legislature's inclusion of the Korean conflict in the definition of the phrase "active service in time of war" (in N.J.S.A. 54:4-3.12, now repealed and replaced by the Definitional Statute), was not unconstitutional "because the United States never formally declared war," and although the (then) statute did not "re-enact the words 'other emergency' set forth" in the Constitution, the Legislature was nonetheless "prescribing, within its constitutional grant of authority," that service during the Korean conflict (which was formally proclaimed as a national emergency by the President December 1950), was one "in time of war."); Donnenwirth v. Twp. of Edison, (Div. of Tax Appeals 1967) (reversing the denial of local property tax exemption for the residence owned by a U.S. Marine who was injured while training as a jet pilot in October 1965 in the United States, and holding that: (1) the Exemption Statute did "not limit the place where the injuries may be sustained," and (2) the issue of "is there a war?" is not dependent on a formal declaration by Congress, which has the sole right to so declare, thus, "the Vietnam conflict is a war," based on

the reality of the lives lost, and the fact that the Legislature did not intend to limit application of the Exemption Statute "to a 'de jure war,'" when using the term "in time of war.").[8] Cf. 9 Op. N.J. Att'y Gen. (April 21, 1975) (in connection with pension rights while on military service "during war or in time of emergency" requires the term "war" to be "construed as strictly the period of actual fighting and hostilities" whereas the period of "national emergency" is one defined by the statute, N.J.S.A. 38:23-5 (now 38:23-4.1), as the period of the Korean conflict).

The Definitional Statute avoids the possibilities of varied interpretations by defining specific conflicts and operations. See e.g. 49 Op. N.J. Att'y Gen. (Nov. 23, 1953) (opining that the term "war" in a pension statute (N.J.S.A. 43:14-43, now repealed) should not be construed in a "legalistic or technical sense," but should be interpreted in a "realistic" manner or by the "literal meaning of the word," which was "actual hostilities between the armed forces of two or more nations," such as the Korean conflict, however, suggesting legislation be enacted to enumerate specific wars and conflicts as was enumerated in a separate civil service statute, since the term "war" has "differing views" by differing courts). In this legislative exercise, the court must tread carefully and not use the general societal obligation owed to our veterans to add the Libyan conflict as an additional period of war or emergency into the Definitional Statute. As noted:

> Generally, statutes [which grant preference to, among others, members of the naval militia] . . . would be liberally construed in favor of the citizen who volunteers his services in time of war, but it is not the judicial function to add beneficiaries to those specified in the statutes. The specification of who shall benefit and under what conditions is a legislative function. Our function is to construe the

[8] The ruling is reproduced in New Jersey Assessors Bulletin 173 at 6, 10 (Dec. 1969). Note that at the time of the decision, only the Deduction Statute had included the Vietnam Conflict, not the Exemption Statute. The decision prompted an assessor to opine that assessors "should not be involved" in the grant/denial of tax exemption, and further since "servicem[en] fight[] for all of us," the cost of the tax exemption should not be isolated to the taxing district where the veteran resides and owns property, but should be spread to "all the citizens of the State." See Harold Baumwell, Letter to the Editor, New Jersey Assessors Bulletin (April 1970).

> statute as written and to interpret the legislative intent, but we cannot under the guise of interpretation extend a statute to include persons not intended. We must regard the statutes as meaning what they say and avoid giving them any construction which would distort their meaning. We have no legislative authority and should not construe statutes any more broadly nor give them any greater effect than their language requires.
>
> [Adams v. Atlantic Cnty., 137 N.J.L. 648, 652 (E&A 1948).]

Further, to the extent that there have been federal resolutions or other formal actions as to a particular conflict or operation, our Legislature has been inclusive, not exclusive. See e.g. Barbara Salazar Torreon, Cong. Research Serv., RS21405, U.S. Period of War and Dates of Recent Conflicts, (2017) (compiling the beginning and end dates of wars and conflicts in connection with the phrase "periods of war" used in Title 38 of the federal law dealing with the VA and regulations thereunder, and noting that after World War II, the remaining were "conflicts" such as the Korean Conflict, Vietnam Era, Conflicts in Lebanon, Grenada and Panama; Operation Desert Storm, Operation Enduring Freedom, Operation Iraqi Freedom. All of these conflicts are included in the Definitional Statute). However, Libya is not listed as a federally recognized conflict for purposes of veterans' benefits. Ibid. Cf. also Scurozo, 392 N.J. Super. at 477 (where federal legislation limited VA benefits to World War II veterans who were in active service, which did not include those in training for such duty, New Jersey's similar limitation, i.e. exclusion of those training for duty, was proper) (citing to 38 U.S.C. § 101 and its predecessors); 38 U.S.C. §101(11) ("period of war" for purposes of disability benefits limited to "Spanish-American War, the Mexican border period, World War I, World War II, the Korean conflict, the Vietnam era, the Persian Gulf War, and the period beginning on the date of any future declaration of war by the Congress and ending on the date prescribed by Presidential proclamation or concurrent resolution of the Congress."); Exec. Order No. 12744, 56 Fed. Reg. 2663 (Jan. 23, 1991) (deeming the Persian Gulf, Red Sea,

Gulf of Oman, Gulf of Aden, a portion of the Arabian Sea, and land areas of Iraq, among others, including the airspace above, are deemed a "combat zone" beginning January 17, 1991 for purposes of I.R.C. § 112 which excludes combat pay from federal income tax).[9] There was no such EO deeming Libya as a combat zone. See Towne v. United States, 113 Fed. Cl. 87, 98 (Fed. Cl. 2013) ("Libya was not designated as a combat zone at the time of the attacks" on the "U.S. Embassy [in] Benghazi"). Thus, the non-inclusion of the 1986 conflict in Libya in the Definitional Statute is not at odds with federal legislation or federal regulations.

Indeed, the conflict with Libya is also not included in New Jersey's civil service and pension statutes which provide veterans with certain benefits. Rather, and for the most part, these statutes include almost the same "periods of war" included in the Definitional Statute. See e.g. N.J.S.A. 11A:5-1 (relating to Veterans' Preference in Civil Service); N.J.S.A. 18A:66-2 (relating to pensions); N.J.S.A. 43:15A-6 (relating to pensions); and N.J.S.A. 43:16A-11.7 (relating to

[9] A combat zone is "any area which" is designated as such by the President by an EO, "in which Armed Forces of the United States are or have engaged in combat." I.R.C. § 112(c)(2). Although I.R.C. § 112 was "enacted in 1945 to provide a tax benefit to members of the armed services whose lives were placed at risk because of service to their country," if a veteran did not serve in the combat zone for the particular period, his/her income was taxable. Carlisle v. United States, 66 Fed. Cl. 627, 632-33 (Fed. Cl. 2005) (citations omitted).

Also pertinent would be an unreported decision, Board of Veterans Appeals, No. 09-46-010, 2013 Vet. App. LEXIS 25611 (Vet. App. June 7, 2013). There, the Veterans' Law Judge ruled that the veteran's active duty in the U.S. Navy from November 17, 1982 until November 16, 1986 in Libya did not qualify him for nonservice connected pension benefits under 38 U.S.C. § 1521 because "that service unfortunately simply is not recognized as during a period of war within the meaning of 38 [U.S.C.] § 1521, the controlling statute." (citing to 38 C.F.R. § 3.2.). The court is aware that this is an unreported federal decision, however, due to the paucity of any cases addressing the conflict in Libya, includes it here, but simply as an example.

New Jersey also recognizes the combat zones as being included in the Definitional Section. See Division of Taxation, N.J. Tax Guide, Veterans in New Jersey, Serving Those Who Serve (the Exemption Statute "requires a veteran to have served during a specific wartime period," and for "military service after 1975," there is a 14-day service requirement "in a combat zone") (available at https://www.state.nj.us/treasury/taxation/documents/pdf/guides/Veterans-in-New-Jersey.pdf) (last accessed July 9, 2018).

pensions).[10] Thus, the Legislature's decision to identify particular "periods" for purposes of defining a "time of war" in the Definitional Statute and the Exemption Statute, which includes the periods of an emergency, is not so arbitrary that these statutes can be found as per se invalid on grounds the period of the conflict in Libya was not included. See e.g. Scuorzo, 392 N.J. Super. at 478-80 (comparing the New Jersey non-tax veterans benefit statutes, such as civil service and pension statutes, as supporting Taxation's exclusion of members of the Reserves or National Guard who only trained but did not serve, from tax benefits under the Exemption/Deduction Statute).

Mr. Bentz's argument that the Definitional Statute violates the Supremacy Clause because the federal statutes pertaining to veterans are broader in scope as to a "time of war" designation, is unpersuasive. Only the State (via its local government) imposes, or exempts from imposition, local property tax. The federal government does not. Therefore, definitions for purposes of local property tax are not controlled, or overridden by, federal statutes relating to veterans compensation or benefits. See e.g. Twp. of Galloway v. Duncan, 29 N.J. Tax 520, 534 (Tax 2016) (various federal definitions or interpretations of "direct support" are not controlling for purposes of the Exemption Statute, and although the Exemption Statute relies upon the VA for a determination of disability, it does not "defer to a technical definition or term of art prescribed by military regulation or otherwise."). In any event, and as noted above, federal statutes dealing with VA benefits do not include the conflict with Libya.

[10] Note that the hiring preference for veterans is also constitutionally authorized. See N.J. Const. art. VII, § 1, ¶ 2. Unlike the Definitional Statute, the three statutes relating to pensions include wars prior to the World Wars such as the Indian Wars; Philippine Insurrection; Peking Relief Expedition; Cuban Occupation; Cuban Pacification; Mexican Punitive Expedition; and Mexican Border Patrol, but do not include either the Civil War or the catch-all provision, "any subsequent war, during the period from the date of declaration of war to the date on which actual hostilities shall cease." The Civil Service statue (N.J.S.A. 11A:5-1) does not include the Civil War or the Spanish America War nor the pre-World War I wars which are included in the pension statutes.

Mr. Bentz is understandably passionate that he, as an honorably discharged, 100% permanently disabled veteran, who served abroad during the conflict with Libya and actually witnessed war and war-like conditions, should be treated better if not the same as a 100% disabled veteran who served during the Lebanon peace keeping mission. Thus, Mr. Bentz argues, if the latter merits a local property tax exemption, so too should he.

"[T]he Equal Protection Clause does not require that all persons be treated alike." Garma, 14 N.J. Tax at 15. As long as there is no "suspect" class, or classification which is affected by the legislation, "a legislative classification will be presumed valid, even if it has the effect of treating some differently from others." Ibid. (citation and internal quotation marks omitted).

A "classification involving veterans does not result in 'invidious or irrational' distinctions among a state's residents; does not affect a suspect or semi-suspect class; and does not regulate fundamental rights." Id. at 12 (deciding whether the New Jersey residency requirement of N.J.S.A. 54:4-3.30 violated equal protection). See also Darnell, 167 N.J. Super. at 21 ("veterans' preference laws do not involve a suspect class").

Therefore, the alleged unconstitutionality of the Exemption Statute and the Definitional Statute, as applied to Mr. Bentz, is to be examined under the rational basis scrutiny. This is especially true because the subject matter of this litigation is taxation. Garma, 14 N.J. Tax at 12. See also Armour v. City of Indianapolis, 566 U.S. 673, 681 (2012) (where the "subject matter [of a legislation] is local, economic, social, and commercial [and] . . . a tax classification," it only need to pass a rational basis scrutiny).

A rational basis scrutiny inquires whether the allegedly offensive legislation is rationally related to a legitimate State interest. Id. at 680 (there must be a "rational relationship between the disparity of treatment and some legitimate governmental purpose.") (citation and internal

quotation marks omitted). See also Hooper v. Bernalillo County Assessor, 472 U.S. 612, 618 (1985) ("When a state distributes benefits unequally, the distinctions it makes are subject to scrutiny under the Equal Protection Clause of the Fourteenth Amendment. Generally, a law will survive that scrutiny if the distinction rationally furthers a legitimate state purpose").

In this connection, the legislation being attacked is presumed to be constitutional, and its enactment is assumed to "rest[] upon some rational basis within the knowledge and experience of the legislators." Armour, 566 U.S. at 681 (citation and quotation marks omitted). See also Garma, 14 N.J. Tax at 13-14 (as the Exemption Statute "involves taxation, it must be found constitutional unless the presumption of constitutionality is overcome by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes.") (citation and internal quotation marks omitted).

Precedent has uniformly held that statutes which treat veterans differently for purposes of certain benefits, pass the rational basis muster. See e.g. Ballou v. Dep't of Civ. Serv., 75 N.J. 365 (1978) (veterans preference under civil service statute constitutional); Fischer v. West, 11 Vet. App. 121, 123-124 (Ct. Vet. App. 1998) ("There is a strong presumption that laws providing for government payment of monetary benefits are constitutional," therefore, under the "rational basis standard of review . . . laws restricting the payment of VA benefits in the interest of saving federal resources have been held constitutional even where disparate treatment may result") (citations and internal quotation marks omitted).

It may be that our Legislature did not consider the conflict with Libya for purposes of including it in the Definitional Statute because it was not federally identified as a war or as an emergency due to the short term, the quantum of armed personnel, costs, or damages involved, or because the 1986 EO imposed purely economic sanction or embargoes, or because under federal

law, it never elevated to the level of a war for purposes of providing veteran benefits. These are plausible reasons or are a "reasonably conceivable state of facts" which provides "a rational basis for the classification." Armour, 566 U.S. at 681 (citations omitted); Verizon New Jersey Inc. v. Borough of Hopewell, 26 N.J. Tax 400, 424-425 (Tax 2012) (a tax statute will pass constitutional muster and overcome allegations of equal protection violations, if it has a rational basis and the "'state policy'" in differing treatment is "'plausible,'" and a differing treatment is justifiable "on any reasonably conceivable state of facts" even if "the classification may be mathematically imperfect or that it results in some inequities in practice.") (citations and quotations omitted). See also Horizon Blue Cross Blue Shield of New Jersey v. State, 425 N.J. Super. 1, 21-22 (App. Div. 2012) ("Legislation cannot be invalidated merely by offering evidence that the Legislature was mistaken in its classification because imperfect classifications that are part of a reasonable legislative scheme do not violate the equal protection clause"). (citations and internal quotation marks omitted); U.S. R. Ret. Bd. v. Fritz, 449 U.S. 166, 179-180 (1980) (it is "constitutionally irrelevant" because "a legislative body [need not] articulate its reasons for enacting a statute," especially when there is "a process of line-drawing . . . [in] classifying persons for . . . benefits . . . and the fact the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration."). It may be that the Libyan conflict was never presented to our Legislature in the form of proposed legislation in the first place in which case there may not even have been a legislative decision for this court to pass judgment on.

The "burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it." Armour, 566 U.S. at 681. See also Garma, 14 N.J. Tax at 12 (an attack to the constitutionality of a tax statute requires "the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular

persons and classes.”). Other than asserting that the federal government treats veterans who served during the 1986 Libyan conflict more generously, which the court finds is not evidenced by federal legislation governing veterans’ benefits, Mr. Bentz has not provided this court with evidence sufficient to overcome the presumptive constitutionality of the Exemption Statute and the Definitional Statute.

In sum, the court finds that the Definitional Statute, which is incorporated by reference into the Exemption Statute, is not constitutionally infirm. While it would be eminently promotional of the Legislature’s societal obligation and moral policy of rewarding war veterans such as Mr. Bentz with economic benefits, it is, with the utmost respect for both the Legislature and Mr. Bentz, not for this court to engraft the 1986 conflict with Libya into the Definitional Statute.

CONCLUSION

For the aforementioned reasons, the court rules that the absence of inclusion of the 1986 conflict in Libya as a “time of war,” or as a time of any other “emergency,” does not render the Definitional Statute unconstitutional. The complaint is therefore dismissed.