

assistants, the Orthotics and Prosthetics Board of Examiners (Board) proposes to amend N.J.A.C. 13:44H-3.6(g) to remove reference to assistants.

The Board has provided a 60-day comment period for this notice of proposal. Therefore, this notice is exempted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

The proposed amendment addresses possible confusion about the tasks that licensed assistants may provide and will help to ensure that initial evaluations and the final provision of appliances are performed by the individuals properly prepared to provide these services.

#### Economic Impact

The Board does not believe that the proposed amendment will have any economic impact.

#### Federal Standards Statement

A Federal standards analysis is not required because there are no Federal laws or standards applicable to the proposed amendment.

#### Jobs Impact

The Board does not believe that the proposed amendment will increase or decrease the number of jobs in New Jersey.

#### Agriculture Industry Impact

The proposed amendment will not have any impact on the agriculture industry of this State.

#### Regulatory Flexibility Statement

Since licensed orthotist assistants and licensed prosthetist assistants are individually licensed by the Board, they may be considered "small businesses" under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed amendment will not impose any costs on small businesses and the Board does not believe that licensed orthotist assistants or licensed prosthetist assistants will need to employ any professional services to comply with the proposed amendment. The proposed amendment does not impose any compliance, recordkeeping, or reporting requirements, therefore, a regulatory flexibility analysis is not required.

#### Housing Affordability Impact Analysis

The proposed amendment will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the proposed amendment would evoke a change in the average costs associated with housing because the proposed amendment concerns the presence of licensed orthotist assistants and licensed prosthetist assistants at the initial evaluation and final provision of orthotic and prosthetic appliances.

#### Smart Growth Development Impact Analysis

The proposed amendment will have an insignificant impact on smart growth and there is an extreme unlikelihood that the proposed amendment would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendment concerns the presence of licensed orthotist assistants and licensed prosthetist assistants at the initial evaluation and final provision of orthotic and prosthetic appliances.

**Full text** of the proposal follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

#### SUBCHAPTER 3. CREDENTIALS REQUIRED FOR LICENSURE; TEMPORARY LICENSURE REQUIREMENTS; LICENSURE WITHOUT EXAMINATION; ORTHOTISTS AND PROSTHETISTS

13:44H-3.6 Supervision of an orthotist assistant, prosthetist assistant, prosthetist-orthotist assistant, student, or holder of a temporary license

(a)-(f) (No change.)

(g) The supervising licensee shall be physically present at both the initial evaluation of the patient and the final provision of the orthotic or

prosthetic device by a [licensed orthotist assistant, licensed prosthetist assistant, licensed prosthetist-orthotist assistant,] student or holder of a temporary license to determine the appropriateness of the device delivered.

(h)-(j) (No change.)

## TREASURY-TAXATION

### (a)

#### DIVISION OF TAXATION

#### Real Property Tax Exemption for Permanently and Totally Disabled War Veterans or Surviving Spouses, Surviving Civil Union Partners, or Surviving Domestic Partners of Disabled War Veterans, and Surviving Spouses, Surviving Civil Union Partners, or Surviving Domestic Partners of Servicepersons

#### Proposed New Rules: N.J.A.C. 18:28

Authorized By: John J. Ficara, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:1-2 and 54:4-3.30.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-099.

Submit written comments by August 18, 2017, to:

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Division of Taxation  
Director's Office  
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The agency proposal follows:

#### Summary

Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 18:28 expired on September 18, 2013. The Division of Taxation (Division) has reviewed the expired rules and has determined them to be necessary, reasonable, and proper for the purposes for which were originally proposed. In addition, the expired rules have been updated, supplemented, and amended to take into account reported case law affecting the implementation of the real property tax exemption for permanently and totally disabled war veterans or surviving spouses, surviving civil union partners, or surviving domestic partners of disabled war veterans, and surviving spouses, surviving civil union partners, or surviving domestic partners of servicepersons. Article 8, section 1, paragraph 3 of the New Jersey Constitution allows the Legislature to exempt totally and 100 percent permanently disabled war veterans, their surviving spouses and partners, and the surviving spouses and partners of servicepersons who die on active duty, from real property taxes.

N.J.A.C. 18:28-1.1 sets forth definitions of the following words and phrases needed for eligibility determinations: "active service in time of war," "armed forces," "assessor," "citizenship," "civil union partner," "curtilage," "domestic partner," "domicile," "exempt" or "exemption," "honorably discharged or released under honorable circumstances from active service in time of war," "owner of the legal title to property," "resident," "serviceperson," "surviving civil union partner," "surviving domestic partner," "surviving spouse," "tax year," "territorial waters," "veteran," and "veteran's exemption." Definitions for the term "dwelling house" is found in N.J.S.A. 54:4-3.33. Other definitions are found in N.J.S.A. 54:4-8.10 (veterans deduction statute), the Domestic Partnership Act, N.J.S.A. 26:8A-1 et seq., and the Civil Union Act, N.J.S.A. 37:1-28 et seq.

N.J.A.C. 18:28-1.2 defines the term “direct support” as defined by case law, and sets forth factors determining whether such support meets the qualifications for direct support for certain military operations and peace keeping missions pursuant to *Galloway v. Duncan*, 2016 *Tax Lexis* 22 (Tax 2016); *Fisher v. Millville* 29 *N.J. Tax* 91 (Tax 2016); and *R.J. Wellington v. Township of Hillsborough*, 27 *N.J. Tax* 37 (Tax 2012).

N.J.A.C. 18:28-2.1 states only permanently and totally disabled war veterans of any branch of the Armed Forces of the United States or their unremarried surviving spouses, civil union partners, or domestic partners are granted a full property tax exemption provided the veterans are honorably discharged or released under honorable circumstances from active service in time of war, or died in active service in time of war. The Tax Court has held that the Domestic Partnership Act (DPA) provides the same protection for domestic partners under the veterans exemption as that accorded to married couples. *Hennefield v. Township of Montclair*, 22 *N.J. Tax* 166, 199 (Tax 2005) (“within the intent and meaning of the DPA the court is treating the Plaintiffs’ ownership interest in the subject property in the same fashion as is ‘accorded to married couples,’ for the express purpose of the disabled veteran’s exemption under the Exemption Statute. This determination is consistent with other tax exemptions that were made specifically applicable to domestic partners under the DPA.”). The pertinent part of the Civil Union Act, N.J.S.A. 37:1-33, states that “Whenever in any law, rule, regulation, judicial or administrative proceeding or otherwise, reference is made to ‘marriage,’ ‘husband,’ ‘wife,’ ‘spouse,’ ‘family,’ ‘immediate family,’ ‘dependent,’ ‘next of kin,’ ‘widow,’ ‘widower,’ ‘widowed,’ or another word which in a specific context denotes a marital or spousal relationship, the same shall include a civil union pursuant to the provisions of this Act.” As such, the proposed new rules incorporate terms related to domestic partners and civil unions throughout.

N.J.A.C. 18:28-2.2 sets forth the eligibility requirements that a disabled veteran must demonstrate to qualify for the property tax exemption.

N.J.A.C. 18:28-2.3 sets forth the eligibility requirements that a surviving spouse, surviving civil union partner, or surviving domestic partner of a previously qualified disabled veteran must demonstrate to qualify for the property tax exemption.

N.J.A.C. 18:28-2.4 sets forth the eligibility requirements that a surviving spouse, surviving civil union partner, or surviving domestic partner of a serviceperson who died while in active service in time of war must demonstrate to qualify for the property tax exemption.

N.J.A.C. 18:28-2.5 sets forth circumstances that disqualify a surviving spouse, surviving civil union partner, or surviving domestic partner of a disabled deceased veteran or deceased serviceperson from eligibility for the property tax exemption.

N.J.A.C. 18:28-2.6 lists the branches of the Armed Forces of the United States to which a qualifying disabled veteran or deceased serviceperson must have belonged, based on information provided by the New Jersey Department of Military and Veterans’ Affairs.

N.J.A.C. 18:28-2.7 lists those organizations and individuals that are not considered part of the United States Armed Forces based on information provided by the New Jersey Department of Military and Veterans’ Affairs. The section also states that training in the reserves during the pendency of a conflict is not active service for exemption purposes. See *Twp. of Dover v. Scuzorzo*, 392 *N.J. Super.* 466, 477 (App. Div. 2007).

N.J.A.C. 18:28-2.8 provides that a disenrollment certificate or a form of release terminating temporary service or deferring military induction, or a clemency discharge, does not meet the qualifications for an honorable discharge for exemption eligibility.

N.J.A.C. 18:28-2.9 sets forth the forms of real property ownership that are eligible for exemption status, including partial ownership pursuant to *R.J. Wellington v. Township of Hillsborough*, 27 *N.J. Tax* 37 (Tax 2012). See also: *Joan Hays v. Paramus Borough*, *N.J. Tax Docket* No. 018743-2013 (April 17, 2015), affirming *R.J. Wellington v. Township of Hillsborough*. The court in *R.J. Wellington* granted the disabled veteran’s exemption to the plaintiff on the plaintiff’s proportionate share of ownership in a property.

N.J.A.C. 18:28-2.10 sets forth the forms of real property ownership that are ineligible for exempt status pursuant to *R.J. Wellington v.*

*Township of Hillsborough*, 27 *N.J. Tax* 37 (Tax 2012) and *1785 Swathmore, LLC, Plaintiff-Appellant, v. Township of Lakewood*, 2015 *N.J. Super. Unpub. LEXIS* 2478 (October 5, 2015). See also: *Joan Hays v. Paramus Borough*, *N.J. Tax Docket* No. 018743-2013 (April 17, 2015).

N.J.A.C. 18:28-2.11 states the requirements and documentation needed to establish a disability that qualifies a claimant for the exemption, including conditions whereby a retroactive disability rating may qualify a claimant for the exemption.

N.J.A.C. 18:28-2.12 provides that, once granted, a claimant does not need to periodically reapply for renewal of the exemption. However, the assessor may request additional information pertaining to continued eligibility.

N.J.A.C. 18:28-2.13 sets forth that the property tax exemption must be apportioned where a claimant resides in only a portion of the real property owned, and provides examples of how the exemption is calculated in such instances.

N.J.A.C. 18:28-2.14 sets forth the proration calculation when the title to property changes during a tax year and cross-references N.J.A.C. 18:28-2.13 to identify the proration method for the exemption for multi-unit veteran/nonveteran properties.

N.J.A.C. 18:28-2.15 authorizes a municipality to refund all taxes collected on property that would have been exempt had proper claim in writing been made pursuant to *Salvatore Del Priore v. Edison Township*, 2013 *N.J. Super. Unpub. LEXIS* 1230 (May 22, 2013). The court in *Salvatore Del Priore* upheld that a township’s action to codify and limit its policy for making refunds was a constitutionally permissible exercise of its statutory discretion.

N.J.A.C. 18:28-2.16 provides that a claim for disabled veteran’s property tax exemption must be in addition to any veteran’s deduction to which claimant may be entitled, and if a claimant owns property other than a principal residence in the State, the \$250.00 veteran’s tax deduction may also be claimed with respect to that other property.

N.J.A.C. 18:28-2.17 states that special assessments for local improvements are not eligible for exemption.

N.J.A.C. 18:28-2.18 provides that an appeal from an assessor’s denial of a disabled veteran’s property tax exemption claim is to be handled in the same manner as is provided for appeals from assessments generally. Furthermore, where a veteran’s exemption claim is denied after April 1 of the current year, a claimant may file an appeal with the county tax board or the Tax Court of New Jersey at any time on or before April 1 of the succeeding year. Finally, the rule does not require a disabled veteran to satisfy the tax payment provisions of N.J.S.A. 54:3-27 and 54:51A-1.b in order to file an appeal with the county tax board or the Tax Court of New Jersey for exemption qualification.

N.J.A.C. 18:28-3.1 requires all claims for exemption to be submitted on Division of Taxation forms D.V.S.S.E. and supplemental D.V.S.S.E. and, if applicable, with supporting documentation. The forms are available on the Division of Taxation’s website and at the municipal assessor’s office.

N.J.A.C. 18:28-3.2 requires certain documentation to be provided in support of the claim to the tax exemption. The rule also requires documentation, such as United States Department of Defense Form DD-214, supporting proof of active duty of the veteran or service person in the United States Armed Forces in time of war or in peacekeeping missions and operations for the statutorily requisite time.

N.J.A.C. 18:28-3.3 requires documentation demonstrating that the veteran legally owns the property.

N.J.A.C. 18:28-3.4 requires documentation in support of a surviving spouse, civil union partner, or domestic partner seeking the tax exemption. The rule also specifies which documents are necessary to support a claim for the exemption.

N.J.A.C. 18:28-3.5 requires documentation demonstrating that the veteran suffered a 100 percent permanent and total wartime service-connected disability in the form of a letter certification issued by the United States Department of Veterans Affairs. The rule also requires supporting documentation for a surviving spouse, surviving civil union partner, or surviving registered domestic partner to demonstrate the veteran suffered a 100 percent permanent and total wartime service-

connected disability, and is now deceased, or that the serviceperson died while on active duty in a time of war.

N.J.A.C. 18:28-3.6 sets forth the procedures by which the assessor reviews the exemption claim and either denies the claim and so notifies the claimant, or approves the claim and notifies the tax collector and municipal governing body. The rule further provides that the assessor notify the county tax board of any approval.

N.J.A.C. 18:28-3.7 provides that a municipal assessor may seek additional information for review of an existing exemption from a claimant by requesting the claimant to complete Division of Taxation Form C.O.E.D.V.S.S.E. available on the Division of Taxation’s website.

Because the Division has provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

#### **Social Impact**

The proposed new rules assure uniform evaluation and processing of veteran’s property tax exemption claims in accordance with statutes and case law. The proposed new rules assure that the property tax exemption may be requested by way of accurate, uniform procedures that apply equally to qualified veterans and their surviving spouses, surviving civil union partners, and surviving registered domestic partners, in keeping with New Jersey’s broad public policy initiatives.

#### **Economic Impact**

The proposed new rules should have no adverse economic impact, because the proposed new rules primarily incorporate existing statutory law and case law that construe the requirements for veteran claimants to qualify. With the expansion of the categories of coverage to certain civil union and domestic partners, the economic impact will be positive on the classes of individuals affected. Any economic impact on taxing districts due to the expansion of the benefit to civil union and domestic partners, the court’s expansion of the exemption to include partial ownership in *R.J. Wellington v. Township of Hillsborough* 27 *N.J. Tax* 37 at 57, and the limitation on legal entity ownership in 1785 *Swathmore, LLC, Plaintiff-Appellant, v. Township of Lakewood*, 2015 *N.J. Super. Unpub. LEXIS* 2478 (October 5, 2015), likely will be minimal, because of the relatively small percentage of the general population to which the benefit applies. Similarly, the impact of the court’s interpretation of the “active service in time of war” requirement, in *Twp. of Dover v. Scuzo*, 392 *N.J. Super.* at 477, likely will be minimal because of the relatively small percentage of the general population to which the benefit applies. Lastly, the impact of *Galloway v. Duncan*, 2016 *Tax Lexis* 22 (Tax 2016); *Fisher v. Millville*, 29 *N.J. Tax* 91 (Tax 2016); and *R.J. Wellington v. Township of Hillsborough*, 27 *N.J. Tax* 37 (Tax 2012) defining “direct support” will likely be minimal, because of the relatively small percentage of the general population to which the benefit applies. The Division does not expect to require a staff increase or other additional resources to carry out its responsibilities related to these proposed new rules.

#### **Federal Standards Statement**

The proposed new rules do not contain requirements that exceed any requirements imposed by Federal law. The proposed new rules represent policies of the State of New Jersey regarding implementation of the veterans’ real property tax exemption established by N.J.S.A. 54:4-3.30 et seq., that are independent of Federal requirements or standards. Accordingly, a Federal standards analysis is not required because the rulemaking authority exists pursuant to N.J.S.A. 54:50-1 et seq., and is not subject to any Federal requirements or standards.

#### **Jobs Impact**

The Division does not anticipate that any jobs will be generated or lost as the result of the proposed new rules.

#### **Agriculture Industry Impact**

The proposed new rules will have no impact on the agriculture industry.

#### **Regulatory Flexibility Analysis**

The proposed new rules do not impact small businesses as defined in N.J.S.A. 52:4B-16 et seq., because they relate only to a real property tax exemption for certain real property owned by an eligible veteran

claimant. Further, the proposed new rules are directed to local property tax officials for instructional purposes. The proposed new rules do not impose any reporting, recordkeeping, or compliance requirements on small businesses.

#### **Housing Affordability Impact Analysis**

The proposed new rules would not result in a change in the average costs associated with housing or on the affordability of housing. The proposed new rules have no impact on any aspect of housing because they deal with a property tax exemption.

#### **Smart Growth Development Impact Analysis**

The proposed new rules would not result in a change in housing production within Planning Areas 1 or 2, within designated centers, under development of the State’s urban or suburban areas with regard to existing or proposed land use, protection of open space or transportation systems. Therefore, the proposed new rules will not affect the achievement of smart growth or the implementation under the State Development and Redevelopment Plan, as the proposed new rules deal with a real property tax exemption.

**Full text** of the proposed new rules follows:

#### CHAPTER 28

#### REAL PROPERTY TAX EXEMPTION FOR PERMANENTLY AND TOTALLY DISABLED WAR VETERANS, OR SURVIVING SPOUSES, SURVIVING CIVIL UNION PARTNERS, OR SURVIVING DOMESTIC PARTNERS OF DISABLED WAR VETERANS AND SURVIVING SPOUSES, SURVIVING CIVIL UNION PARTNERS, OR SURVIVING DOMESTIC PARTNERS OF SERVICEPERSONS

#### SUBCHAPTER 1. DEFINITIONS

##### 18:28-1.1 Words and phrases defined

(a) Certain words and phrases when used in this chapter are defined in N.J.S.A. 54:4-3.30 et seq., and 54:4-8.10 and must be referenced to determine one’s eligibility for the exemption.

(b) The following words and phrases, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Active service and/or active duty in time of war” means active service at some time during one of the periods defined in N.J.S.A. 54:4-8.10(a) as provided by N.J.S.A. 54:4-3.33a.

“Armed forces” means the land, air, and sea military forces of the United States.

“Assessor,” as defined in N.J.S.A. 54:4-8.10(b), includes a deputy assessor of a taxing district charged with the duty of assessing real property for the purpose of general taxation.

“Citizenship” means New Jersey State citizenship, while United States citizenship is not required pursuant to *Roxbury Township v. Heydt*, 6 *N.J. Tax* 73 (Tax 1983) and *Wolff v. Baldwin*, 9 *N.J. Tax* 11 (Tax 1986).

“Civil union partner” is the lawful civil union partner as defined by N.J.S.A. 37:1-29 et seq., of a veteran or deceased serviceperson.

“Curtilage” means the enclosed space of ground and building immediately surrounding a dwelling house.

“Disabled veteran” means a veteran as defined by N.J.S.A. 54:4-8.10(h) who has been or shall be declared by the United States Veterans Administration or its successor to have a service-connected total or 100 percent permanent disability as defined in N.J.S.A. 54:4-3.30.

“Domestic partner” means the lawful domestic partner registered under N.J.S.A. 26:8A-1 et seq., of a veteran or deceased serviceperson.

“Domicile” is any place an individual regards as his or her permanent home; the place he or she intends to return to after a period of absence. A person has only one domicile, although he or she may reside in more than one place. Domicile, once established, continues until the individual moves to a new location with the intent to make it his or her permanent home and to abandon his or her prior domicile. Moving to a new location for less than 12 months, does not change domicile if the clear intent is to return to New Jersey.

“Dwelling house” is defined by N.J.S.A. 54:4-3.33.

“Exempt” or “exemption” is the status where a claimant has no legal obligation to pay real property tax on the assessed value of the claimant’s dwelling house, including the lot and curtilage on which the house is situated pursuant to N.J.S.A. 54:4-3.30.

“Honorably discharged or released under honorable circumstances from active service in time of war” is defined by N.J.S.A. 54:4-8.10(d).

“Owner of the legal title to property” means possession of legal title to the dwelling house for which exemption is claimed or as otherwise provided for in N.J.A.C. 18:28-2.9. In the case of a married couple or civil union partners, the real property owned as tenants by the entirety is deemed wholly owned by the claimant. Where the domestic partners are registered pursuant to N.J.S.A. 26:8A-1 et seq., the real property is deemed partially owned by the claimant.

“Resident” is defined by N.J.S.A. 54:4-8.10(f).

“Serviceperson” means a citizen and resident of this State who has performed in active service in time of war in a branch of the Armed Forces of the United States and who died while on active duty.

“Surviving civil union partner” means the lawful surviving civil union partner of a disabled veteran or serviceperson.

“Surviving domestic partner” means the lawful surviving registered domestic partner of a disabled veteran or serviceperson.

“Surviving spouse” is defined by N.J.S.A. 54:4-8.10(j).

“Tax year” is defined by N.J.S.A. 54:4-8.10(g).

“Territorial waters,” as used in N.J.S.A. 54:4-8.10, means the part of the sea adjacent to the coast of a given country, which is deemed by international law to be within the sovereignty of that country.

“Veteran” means any citizen and resident of this State honorably discharged or released under honorable circumstances from active service in time of war in a branch of the Armed Forces of the United States.

“Veteran’s exemption” means the real property tax exemption allowable pursuant to N.J.S.A. 54:4-3.30.

18:28-1.2 Direct support

(a) “Direct support” means a mission requiring a force to support another specific force and authorizing it to answer to the supported force’s request for assistance. Support is the aiding, protecting, complementing, or sustaining of another force in accordance with a military directive requiring such action. Such factors determining whether support qualifies as direct support include, but are not limited to:

1. Being assigned or deployed to the actual conflict area; and
2. Handling and exposure to the risks and hazards of the conflict area with no intermediary stops of hazardous materials from the conflict area, the treating of wounded soldiers directly from the conflict area.

SUBCHAPTER 2. CONDITIONS OF ELIGIBILITY AND QUALIFICATIONS

18:28-2.1 Disabled veteran’s property tax exemption

One hundred percent permanently and totally disabled war veterans or the surviving spouses, surviving civil union partners, or surviving domestic partners of such disabled war veterans when such veterans are honorably discharged or released under honorable circumstances 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 under N.J.S.A. 54:4-3.30.

18:28-2.2 Qualifying for the property tax exemption; disabled veteran

(a) To qualify for the property tax exemption, a disabled veteran must:

1. Be a citizen and resident of New Jersey;
2. Possess an honorable discharge or release from active service in a time of war in a branch of the United States Armed Forces;
3. Own legal title to the premises that constitutes the dwelling house and principal place of residency; and
4. Be declared by the United States Veterans Administration to be 100 percent permanently and totally disabled connected to wartime service.

(b) For purposes of qualifying for this exemption, a claimant has the burden to prove the amount of land necessary for the use and fair enjoyment of the real property.

18:28-2.3 Qualifying for the property tax exemption; surviving spouse, surviving civil union partner, or surviving domestic partner

(a) The surviving spouse, surviving civil union partner, or surviving domestic partner of a previously qualified disabled veteran must:

1. Be the lawful surviving spouse, surviving civil union partner, or surviving domestic partner of a veteran who was, at the time of death, a resident of New Jersey, and who had an ownership interest in the premises constituting the dwelling house and claimant’s principal place of residence. Furthermore, once the ownership criteria have been met by the veteran, any subsequent dwelling house and principal residence, except for cooperative units, located in New Jersey and acquired by the surviving spouse, surviving civil union partner, or surviving domestic partner after the death of the veteran, is entitled to the exemption.
2. Remain unremarried or not enter into a new civil union or new domestic partnership;
3. Be a citizen and resident of New Jersey; and
4. Own legal title to the premises that constitutes the dwelling house and claimant’s principal place of residence.

(b) Surviving spouses, surviving civil union partners, or surviving domestic partners of veterans may establish their residency and that of the deceased spouse, deceased civil union partner, or deceased domestic partner, when applicable, by submission of a valid New Jersey motor vehicle driver’s license or registration, voter registration card, State tax return filing, post office verification, local memberships, children’s school attendance, or other means satisfactory to the assessor.

(b) Surviving spouses, surviving civil union partners, or surviving domestic partners of veterans may establish their residency and that of the deceased spouse, deceased civil union partner, or deceased domestic partner, when applicable, by submission of a valid New Jersey motor vehicle driver’s license or registration, voter registration card, State tax return filing, post office verification, local memberships, children’s school attendance, or other means satisfactory to the assessor.

(b) Surviving spouses, surviving civil union partners, or surviving domestic partners of veterans may establish their residency and that of the deceased spouse, deceased civil union partner, or deceased domestic partner, when applicable, by submission of a valid New Jersey motor vehicle driver’s license or registration, voter registration card, State tax return filing, post office verification, local memberships, children’s school attendance, or other means satisfactory to the assessor.

18:28-2.4 Qualifying for the property tax exemption by the surviving spouse, surviving civil union partner, or surviving domestic partner of a serviceperson who died while in active service in time of war

(a) The surviving spouse, surviving civil union partner, or surviving domestic partner of a serviceperson who died while in active service in time of war, in order to qualify for the property tax exemption, must:

1. Be the lawful surviving spouse, surviving civil union partner, or surviving domestic partner of a citizen and resident of New Jersey who died while in active service in a branch of the United States Armed Forces in a time of war;
2. Remain unremarried or not enter into a new civil union or new domestic partnership;
3. Be a resident of New Jersey; and
4. Own legal title to the premises that constitutes the dwelling house and claimant’s principal place of residence or any other dwelling house thereafter acquired.

(b) Surviving spouses, surviving civil union partners, or surviving domestic partners of servicepersons who died on active duty may establish their residency and that of the deceased spouse, deceased civil union partner, or deceased domestic partner, when applicable, by submission of a valid New Jersey motor vehicle driver’s license or registration, voter registration card, State tax return filing, post office verification, local memberships, children’s school attendance, or other means satisfactory to the assessor.

18:28-2.5 Ineligible surviving spouse, surviving civil union partner, or surviving domestic partner

(a) The surviving spouse, surviving civil union partner, or surviving domestic partner of a disabled veteran or of a serviceperson, though a New Jersey citizen and resident himself or herself, is not entitled to the exemption, if the veteran or serviceperson, at the time of death, was not a legal resident of the State.

(b) Remarriage of the surviving spouse terminates the tax exemption. The exemption is not regained where the second marriage ends in divorce, but is regained if the remarriage is annulled. Likewise, a surviving civil union partner or surviving domestic partner loses the exemption on entering a new civil union or new domestic partnership. An annulment of the new civil union or new domestic partnership restores the exemption, but termination of the new civil union or new domestic partnership does not.

(a) The surviving spouse, surviving civil union partner, or surviving domestic partner of a disabled veteran or of a serviceperson, though a New Jersey citizen and resident himself or herself, is not entitled to the exemption, if the veteran or serviceperson, at the time of death, was not a legal resident of the State.

(b) Remarriage of the surviving spouse terminates the tax exemption. The exemption is not regained where the second marriage ends in divorce, but is regained if the remarriage is annulled. Likewise, a surviving civil union partner or surviving domestic partner loses the exemption on entering a new civil union or new domestic partnership. An annulment of the new civil union or new domestic partnership restores the exemption, but termination of the new civil union or new domestic partnership does not.

## 18:28-2.6 Branches of the Armed Forces of the United States

(a) "Branches of the Armed Forces of the United States" as determined by civilian State and Federal military agencies, such as the New Jersey Department of Military and Veterans' Affairs and United States Department of Defense, include, but are not limited to:

1. Air Force;
2. Army;
3. Army Transport Command;
4. Coast Guard;
5. Marine Corps;
6. Navy;
7. Women's Army Corps (As of July 1, 1943); and
8. Regularly established women's auxiliary units of the Coast Guard, Marine Corps, Air Force, and Navy, together with nurses, when in active service in time of war with the above listed military service branches.

(b) Reserve unit personnel who would qualify for the exemption when deployed for and in active service in time of war with the above listed branches are:

1. Air Force Enlisted Reserve Corps;
2. Air National Guard of the United States;
3. Coast Guard Regular Reserve;
4. Coast Guard Reserve;
5. Dental Reserve Corps of the Navy;
6. Enlisted Reserve Corps;
7. Marine Corps Reserve;
8. Marine Corps Reserve Force;
9. Medical Reserve Corps of the Army;
10. Medical Reserve Corps of the Navy;
11. National Naval Volunteers;
12. National Guard of the United States (Army National Guard of the United States or Airforce National Guard of the United States);
13. Naval Auxiliary Reserve;
14. Naval Militia;
15. Naval Reserve;
16. Naval Reserve Force;
17. Officers' Reserve Corps of the Air Force;
18. Officers' Reserve Corps of the Army;
19. Officers' Reserve Corps of the Navy;
20. Organized Reserve;
21. Public Health Service;
22. Regular Army Reserves;
23. Reserve Corps of the Public Health Service;
24. Reserve Officers Training Corps;
25. Students Army Training Corps;
26. United States Maritime Services (Merchant Marines) during World War II;
27. United States Army Transport Service Transportation Corps during World War II; and
28. United States Naval Transportation Service during World War II.

## 18:28-2.7 Ineligible service organizations and individuals

(a) The following organizations and individuals are not part of the Armed Forces of the United States:

1. American Red Cross;
2. New Jersey State Guard;
3. New Jersey State Militia;
4. Salvation Army;
5. Women's Army Auxiliary Corps (Prior to July 1, 1943);
6. YMHA, YMCA, and YWCA;
7. Civilian employees of the United States and civilians serving as part of civilian defense units, such as Air Raid Precautions, Auxiliary Police, Auxiliary Fire Service, and Coast Guard Reserves; and
8. Members of Allied Forces, such as the Canadian and Polish Armies are not eligible for the exemption.

(b) Ineligible service. Active duty is defined in N.J.S.A. 38A:1-1(i) as full-time duty in active military services of the United States. Active duty for training or field training as a member of a reserve component of the Armed Forces of the United States during the pendency of a conflict does not constitute active duty or active service in time of war for the purpose of qualifying for the veteran's tax exemption.

## 18:28-2.8 Ineligible discharge

(a) A disenrollment certificate or other form of release terminating temporary service in a military or naval branch of the Armed Forces on a voluntary and part-time basis without pay, or a release from or deferment of induction into active military service cannot be accepted as proof of the discharge requirement.

(b) Clemency discharge is a "neutral discharge" according to the United States Justice Department. Although it is not less than honorable, it is something other than honorable. As such it does not meet the requirement of honorable discharge.

## 18:28-2.9 Eligible ownership

(a) The type of ownership required for an exemption may be full ownership or partial ownership.

(b) Where a husband and wife or civil union partners hold title as tenants by the entirety, each is considered to hold a full interest; thus, either may be entitled to the exemption if otherwise qualified.

(c) Ownership held by the qualified disabled veteran, surviving spouse, surviving civil union partner, or surviving domestic partner as a tenant for life or as a life estate, meets the ownership requirement.

(d) Property purchased under an executory contract of sale is considered to have met the ownership criteria.

(e) Property held by a guardian, trustee, committee, conservator, or other fiduciary for a person who is otherwise qualified for the exemption is considered to have met the ownership requirement.

(f) Where a qualified disabled veteran and another hold title as joint tenants with the right of survivorship or as tenants in common, each is considered to hold an interest and thus either may be entitled to their proportionate share of the exemption if otherwise qualified.

## 18:28-2.10 Ineligible ownership

(a) Resident shareholders of cooperative or mutual housing associations do not possess ownership interests that qualify for the exemption.

(b) Property held by or titled to a corporation, partnership, LLC, or LLP is ineligible for the exemption.

## 18:28-2.11 United States Department of Veterans Affairs disability rating

(a) The disability rating of the veteran must be total and 100 percent permanent, which must be certified by the United States Department of Veterans Affairs.

(b) The exemption will be granted only upon the assessor receiving an original issued letter on the letterhead of the Department of Veterans Affairs stating that the Department's records disclose that the wartime service connected disability is totally disabling; that a 100 percent permanent and total evaluation was assigned on a given date in accordance with the Department of Veterans Affairs rating schedule; and the veteran was not so evaluated because of hospitalization or surgery and recuperation. The letter must also state the dates of service and the form of discharge and be signed by a representative of the United States Department of Veterans Affairs.

(c) If the veteran dies while waiting to get his or her rating, and the Department of Veterans Affairs retroactively grants the 100 percent total and permanent disability rating posthumously, the surviving spouse, surviving civil union partner, or surviving domestic partner, if otherwise eligible, may qualify for the exemption based on the posthumous disability rating evaluation.

(d) Provided all other eligibility criteria are met, the exemption must be granted prospectively as of the date of the letter from the Department of Veterans Affairs granting the rating and provided a written claim is filed with the assessor. The governing body of a municipality has the discretion to make the exemption retroactive to the date of 100 percent disability stated on the Department of Veterans Affairs letter, provided all other eligibility criteria are met as permitted by N.J.S.A. 54:4-3.32.

## 18:28-2.12 Continuing the exemption

The exemption, once granted, will remain in effect from year to year without the need for a claimant to refile. However, the assessor may request additional information in support of claimant's continued eligibility for the exemption.

## 18:28-2.13 Exemption apportioned, multi-unit, partial ownership

Where a multiple-family dwelling is owned by a claimant who resides in a portion thereof, the assessor shall aggregate the assessment on the lot or curtilage and building, and allow an exemption of that percentage of the aggregate assessment as the value of the veteran's residential dwelling bears to the value of the entire building.

## Example 1

Assessed value: \$300,000

Annual property tax: \$5,725

Property owner #1 50% ownership

Assessed value: \$150,000 Share of property tax: \$2,862.50

Property owner #2 (veteran) 50% ownership

Assessed value: \$150,000 Share of property tax: \$2,862.50

Owner #2 (veteran) is exempt in the amount of \$150,000 of assessed value on the property.

Total property tax = \$2,862.50 for the year to nonveteran.

## Example 2

Assessed value: \$100,000

Annual property tax: \$2,000

Property owner #1 25% ownership

Assessed value: \$25,000 Share of property tax: \$500.00

Property owner #2 (veteran) 25% ownership

Assessed value: \$25,000 Share of property tax: \$500.00

Property owner #3 25% ownership

Assessed value: \$25,000 Share of property tax: \$500.00

Property owner #4 25% ownership

Assessed value: \$25,000 Share of property tax: \$500.00

Owner #2 (veteran) is exempt in the amount of \$25,000 of assessed value on the property.

Total property tax = \$1,500 for the year to nonveterans.

## 18:28-2.14 Exemption prorated

When a claim is filed during a tax year, the assessor must prorate the exemption for the remaining portion of that tax year from the date the property was acquired, assuming all other criteria are met. Similarly, upon the death of a claimant or change in title, the exempt property will be removed from the exempt list as of the first day of the month following the claimant's demise or property conveyance as per N.J.S.A. 54:4-63.26 through 29. For multi-unit/nonveteran proration, see N.J.A.C. 18:28-2.13.

## 18:28-2.15 Refunds for prior years

The governing body of each municipality, by appropriate resolution, may return all taxes collected on a property that would have been exempt had a proper claim in writing been made. However, no refunds will be made prior to the effective date of the exemption act, N.J.S.A. 54:4-3.30 et seq., July 21, 1948.

## 18:28-2.16 Exemption available in addition to other veteran's deductions

A claim for disabled veteran's property tax exemption will be in addition to any veteran's deduction to which the claimant may be entitled. Accordingly, where a claimant owns property other than his or her principal residence in the State, the \$250.00 veteran's tax deduction may also be claimed with respect to that other property.

## 18:28-2.17 Special assessments for local improvements not included

Special assessments for local improvements are not eligible for exemption.

## 18:28-2.18 Appeals

(a) An aggrieved claimant may appeal from the denial of a claim for a disabled veteran's property tax exemption in the same manner as is provided for appeals from assessments generally as provided by N.J.S.A. 54:4-8.21 and 54:3-21 et seq. A claimant is entitled to file an appeal with the county board of taxation at any time on or before April 1 of the succeeding year where the claim was denied after April 1 of the current year. Disabled veterans are not required to satisfy the tax payment requirement of N.J.S.A. 54:3-27 and 54:51A-1.b to perfect an appeal to the county board of taxation and/or the Tax Court of New Jersey where exemption qualification is the subject of the appeal.

(b) A Notice of Disallowance of Claim for Veteran's Property Tax Deduction/Disabled Veteran's Exemption, Division of Taxation Form VNDA, may be used by an assessor when denying the claim.

## SUBCHAPTER 3. APPLICATION FOR EXEMPTION

## 18:28-3.1 Claims in writing; documentation attached

All claims for exemption must be submitted in writing to the assessor on Claim for Property Tax Exemption on Dwelling House of Disabled Veteran or Surviving Spouse/Surviving Civil Union Partner/Surviving Domestic Partner of Disabled Veteran or Serviceperson (Form D.V.S.S.E.) and Supplemental Form for Peacekeeping Missions & Operations (Form Supplemental D.V.S.S.E.), if applicable, as approved by the Director, Division of Taxation. Copies of documents necessary to prove all conditions prerequisite to entitlement for exemption must be attached to the appropriate claim form(s).

## 18:28-3.2 Documentation in support of a claim

(a) The following documentation may be used to establish New Jersey residency:

1. Acceptable documentation to prove New Jersey residency includes a valid New Jersey motor vehicle driver's license or registration, voter registration card, State tax return filing, post office verification, local memberships, children's school attendance, or other such documentation that is satisfactory to the assessor;

2. Surviving spouses, surviving civil union partners, or surviving domestic partners must provide a certificate of marriage, certificate of civil union, or certificate of domestic partnership in addition to (a)1 above.

(b) The following documentation may be used to establish that a claimed veteran or serviceperson was engaged in active service in a branch of the Armed Forces in time of war:

1. Form DD-214 is normally the primary source document to certify military service; however, in the absence of Form DD-214, acceptable secondary source documents are: enlistment or induction record, report of active duty, special orders, service record cards, reports of change, pay cards, and official correspondence.

2. A copy of the claimant's service record (Form DD-214) may be considered to determine whether the claimed veteran or serviceperson was engaged in "active service in time of war," that the assigned unit was in a branch of the United States Armed Forces, and the period served was in "a time of war." This form can aid in determining questionable cases in that it sets forth notations regarding "travel pay allowances," and other factors helpful in making a correct eligibility decision.

3. For service in peacekeeping missions and operations, a claimant must have served the aggregate of at least 14 days in the pertinent conflict area, territorial waters, or theater of operation, except where the claimant suffered a service-connected injury or disability in the conflict area, then actual time served though less than 14 days is sufficient for property tax exemption purposes. Documentation in support of the prerequisite time of active duty may be shown by the following key indices in the claimant's Form DD-214:

i. To verify the required 14 days of service in a conflict area for Lebanon, Grenada, or Panama, the claimant might present "the Overseas Deployment Medal," which would appear in item No. 13 of claimant's Form DD-214 entitled "Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized."

ii. To verify 14 days service in the Persian Gulf War key indices may be "S.W. Asia Service Medal" or "Overseas Service Ribbon" appearing in item No. 13 of claimant's Form DD-214, together with the notation in item No. 18 stating, "participated in Operation Desert Shield/Storm from \_\_\_\_\_ to \_\_\_\_\_ under title 10 U.S.C. 673."

iii. Key indices noted in (b)3i and ii above must be read in conjunction with the dates provided in item No. 12 "Record of Service" to determine that the authorized awards occurred during the applicable periods designated "active service in time of war."

4. Honorable discharge. An "honorable discharge" or "release under honorable circumstances" is required to qualify for the exemption.

18:28-3.3 Documentation demonstrating that the property is legally owned

(a) Documentation that may be accepted as proof that the claimant owned legal title to the property for which the exemption is claimed includes: a copy of the deed, executory contract for property's purchase, probated will, and/or trust document.

1. The property's legal ownership interest must relate to a freehold interest.

18:28-3.4 Documentation in support of surviving spouse, surviving civil union partner, or surviving domestic partner

(a) A surviving spouse exemption claimant must prove marriage to the deceased spouse through whom the claim is made by providing true copies of the marriage certificate identifying the veteran as the claimant's spouse and the veteran's death certificate to the assessor, which must remain on file with the assessor. A surviving domestic partner or surviving civil union partner must prove the existence of a registered domestic partnership or civil union with the veteran by providing true copies of a certificate of domestic partnership or certificate of civil union and the veteran's death certificate to the assessor, which must remain on file with the assessor.

(b) Every claim for exemption must be accompanied by proof that the veteran owned legal title to the dwelling house to allow the surviving spouse, surviving civil union partner, or surviving domestic partner to claim the exemption.

18:28-3.5 Documentation in support of disability; death while in active service in time of war

Every claim must be supported by documentation that the veteran or serviceperson suffered a 100 percent permanent and total wartime service-connected disability. Such proof shall be in the form of a letter certification issued by the United States Department of Veterans Affairs. Where the claim is made by the surviving spouse, surviving civil union partner, or surviving domestic partner of a deceased disabled veteran or serviceperson, a certification of such veteran's 100 percent permanent and total wartime service-connected disability or such serviceperson's death during active duty by the Department of Veterans Affairs is required, except that if the Department refuses to grant such a certification to a civil union partner or a domestic partner solely because of civil union partner status or domestic partner status, other proof may be provided. The certification provided by the Department of Veterans Affairs must also include information relating to marital status, period of active duty, and place of residence at time of death. Where a claim is made by the surviving spouse, surviving civil union partner, or surviving domestic partner, the disabled veteran or deceased serviceperson must have been a resident of New Jersey at the time of death.

18:28-3.6 Disposition of claims by the assessor

(a) Upon receipt of a written claim for exemption, the assessor shall immediately determine the validity of the claim. If determined invalid, the assessor shall notify the claimant in writing of the disapproved claim and advise claimant of the right to appeal.

(b) If determined valid, the assessor shall notify the collector in writing of the approved claim. Said notification to the collector will set forth the following:

1. Name of property owner;
2. A brief description of the property;
3. Present assessed value of the property;
4. Exact date on which claimant acquired the property, was declared disabled, or became entitled to the exemption, whichever occurred last;
5. The proportionate share of the exemption to which the claimant is entitled; and
6. Citation of law authorizing the exemption; that is, N.J.S.A. 54:4-3.30.

(c) In most cases, exemption will take effect during the tax year subsequent to the assessors' filing of their tax lists on January 10. However, cancellation of an eligible veteran's taxes for the remainder of the year can be requested by a written confirmation of the assessor to both the local governing body and the tax collector that the veteran meets the conditions for exemption in the manner required in N.J.A.C. 18:28-3.2(b). The municipal tax collector is then authorized to cancel the tax assessment if the municipal governing body approves the refund. The governing body forwards the assessor's statement of approval, along with the governing body's resolution, to the county board of taxation. In this manner, the veteran is able to receive the exemption after the closing of the tax list.

(d) A partial or prorated exemption is permitted for the remainder of any taxable year from the date ownership or title to the dwelling house is acquired, provided all other eligibility requirements are met. For example, when an application is filed on June 1st of the tax year for exemption on a dwelling house acquired on February 14th of the tax year, the assessed value for taxation purposes may be prorated so that 44/365ths of the total assessment is taxable and 321/365ths is exempt.

18:28-3.7 Assessor review of continuing eligibility

The Certification of Eligibility to Continue Receipt of Disabled Veterans' Real Property Tax Exemption, Form C.O.E.D.V.S.S.E., available on the Division of Taxation's website, may be used by municipal assessors at their discretion to confirm ongoing eligibility for the disabled veteran's property tax exemption if the assessor believes that a change in an exemption claimant's status, for example, ownership, residency, marital/civil union/domestic partnership status, etc., has occurred that may cause the existing exemption to be disapproved.