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THE TAX COURT COMMITTEE ON OPINIONS

TOWNSHIP OF FREEHOLD, Plaintiff, v. CENTRASTATE HEALTHCARE SERVICES, INC., Defendant.	:	TAX COURT OF NEW JERSEY DOCKET Nos. 000047-2016 000048-2016 Approved for Publication In the New Jersey Tax Court Reports

Decided: January 5, 2021

Martin Allen for plaintiff
(DiFrancesco Bateman et al., P.C., attorneys, Kevin A. McDonald and Wesley E. Buirkle, on the brief)

David B. Wolfe for defendant
(Skoloff & Wolfe, P.C., attorneys).

SUNDAR, J.T.C.

This is the court's opinion deciding defendant's motions to reconsider this court's reconsidered decision and Orders of January 5, 2018. Those Orders had granted partial summary judgment to plaintiff (Freehold) and denied local property tax exemption for tax years 2014 and 2015 for certain property owned by defendant (CHSI) because CHSI was a for-profit entity.[1] CHSI, through its current counsel, now argues that pursuant to this court's subsequent July 2018

[1] The above captioned complaints pertain to Freehold's appeals seeking placement of omitted assessments for tax years 2014 and 2015 on CHSI's property. The court's January 5, 2018 Orders also included tax year 2016 for which Freehold had filed an affirmative appeal and which is not being challenged herein. CHSI was represented by another law firm during the proceedings which resulted in the January 5, 2018 Orders.

decision in Borough of Red Bank v. RMC-Meridian Health, 30 N.J. Tax 551 (Tax 2018), aff'd, 2019 N.J. Super. Unpub. LEXIS 574, *1 (App. Div.), motion for leave to appeal denied, 238 N.J. 455 (2019), this court lacked jurisdiction to deny the tax exemption, therefore, it should now dismiss Freehold's omitted assessment appeals for tax years 2014 and 2015 for the same reasons it dismissed the taxing district's 2014 and 2015 omitted assessment appeals in RMC. Freehold opposes the motions as being egregiously untimely, and further because RMC is factually distinct in that there the property owner was a non-profit entity and the taxing district could not prove change in use of the property for revocation of tax exemption, whereas here it is undisputed that there was a change in ownership and CHSI's for-profit status disqualifies its property for tax exemption.

The court finds that CHSI's motions for reconsideration, while proper since the court's prior Orders on partial summary judgment motions were concededly interlocutory, cannot be sustained under R. 4:49-2. This is because the court cannot reconsider what it never considered before, namely, whether Freehold's omitted assessment appeals are time barred under N.J.S.A. 54:3-21 pursuant to the holding in RMC, since that decision was rendered over seven months after the partial summary judgment motions were granted herein. However, CHSI can properly raise the issue of this court's subject matter jurisdiction at any time and even to interlocutory orders. Therefore, the court will deem CHSI's motions as having been filed under R. 1:6-2 seeking to dismiss Freehold's omitted assessment appeals for tax years 2014 and 2015 as statutorily time barred, i.e., due to lack of this court's subject matter jurisdiction.

For the reasons explained below, the court concludes that the holdings in RMC apply here. Specifically, restoring tax-exempt property which ceases to be exempt to the tax rolls, is governed solely by the methodical statutory scheme set forth in N.J.S.A. 54:4-63.26 to -63.30 (hereinafter

the "EC" statute or provisions, EC standing for "exemption cessation") and not the general omitted assessment law, N.J.S.A. 54:4-63.12 to - 63.25, and N.J.S.A. 54:4-63.31 to -63.40 (hereinafter the "general OA law," OA standing for "omitted assessment"). This is so despite any factual differences. Therefore, and as held in RMC, the assessor's grant of tax exemption to the Subject for tax years 2014 and 2015 should have been challenged by Freehold by filing timely appeals under N.J.S.A. 54:3-21, and not by resorting to seeking placement of omitted assessments under the general OA law. For these reasons, the court grants CHSI's motions to dismiss Freehold's omitted assessment appeals for tax years 2014 and 2015 as being untimely.

FACTUAL AND PROCEDURAL BACKGROUND

The property at issue (Subject) is an office condominium unit measuring 3,845 square feet. It used to be owned by CentraState Healthcare Foundation, Inc. It is solely used and occupied by CentraState Medical Center, a non-profit entity that is wholly owned by CentraState Healthcare System, Inc.

Wellness, Inc. was a domestic for-profit entity incorporated in 1983. In 1995, it changed its name to CHSI, defendant herein. CHSI is also wholly owned by CentraState Healthcare System, Inc.

In January of 2008, the Subject's ownership was transferred to CHSI. On October 28, 2008, CSHI, although a for-profit entity, filed an application to Freehold's assessor for continuance of tax exemption on the Subject (presumably for tax year 2009). The responses to the form's questions #4 and #8 stated that the Initial Statement for local property tax exemption was filed November 1, 1995, and that the Subject was sold since the filing of the previous Initial or Further Statement. In further explanation of the sale, CHSI stated:

> This is CentraState's clinic for indigent patients. On January 1, 2008, title to this office condo was conveyed by CentraState Healthcare Foundation to [CHSI] for internal bookkeeping/accounting purposes. However, the sole user of the office remains CentraState Medical Center.[2]

It is undisputed that the assessor had marked the sale on February 5, 2008 as nonusable (NU) under Code 4 (transfer of convenience) in this regard. It is also undisputed that the Subject was granted a tax exemption, and there was no appeal in this regard.

On October 9, 2015, CHSI, still as a for-profit entity, filed a "Further Statement of Organization Claiming Property Tax Exemption" (presumably for tax year 2016). It noted that the "initial statement" claiming an exemption for the Subject was on November 1, 1995, and there were "no changes" to the Subject's ownership since the filing of the prior Initial or Further Statement. As before, the Subject continued to receive tax exemption, and no appeal was filed.

On June 25, 2015, the Tax Court issued an opinion in an unrelated matter involving an unrelated hospital, AHS Hosp. Corp. v. Township of Morristown, 28 N.J. Tax 456, 514, 536 (Tax 2015) denying local property tax exemption to the plaintiff hospital because it "allowed its property to be used for forbidden for-profit activities," and that the property was "being used substantially for profit." Prior to this, it had, from the bench, denied the hospital's partial summary judgment motion to void the omitted assessments for the prior two tax years. In doing so, the court rejected the hospital's contentions that since the prior assessor was on notice of the leases in the property to for-profit entities for those tax years, the assessor could not subsequently revoke the exemption on grounds there was a change in use.

[2] Question 9 of the Initial Statement asks "[i]f the answer to Item 8 is 'yes', describe the property and state to whom and date conveyed."

On November 25, 2015, Freehold, through its counsel (the same counsel who appeared for Morristown in AHS Hosp. Corp.) petitioned the County Board asking it to impose omitted assessments for tax years 2014 and 2015 on the Subject and revoking the tax exemptions granted by the assessor.[3]

On December 17, 2015, the County Board issued judgments dismissing the petitions using Code 6B (Dismissal Without Prejudice - Hearing Waived).

On January 8, 2016, Freehold appealed the County Board judgments to this court on grounds it failed to impose an omitted assessment for the 12-month periods of tax years 2014 and 2015. Freehold alleged that the Subject is taxable as it was being used for non-exempt (for-profit) purposes in violation of N.J.S.A. 54:4-3.6, and that it lost its tax-exempt status pursuant to N.J.S.A. 54:4-63.26 et al. It also alleged that the Subject's assessment for each tax year was less than its true value.

On February 9, 2016, CHSI, through its prior counsel, filed an answer and counterclaim in each case, denying the allegations, raising affirmative defenses including that the complaint was time-barred, and alleging that the assessments exceeded the Subject's true value.

After engaging in discovery, Freehold moved for partial summary judgment on May 26, 2017, seeking Orders denying local property tax exemption to the Subject because CHSI was a for-profit entity, which status also proved that the Subject was being used for making profit, thus in violation of N.J.S.A. 54:4-3.6.[4] CHSI duly opposed the motions.

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[3] The Subject's assessment for each tax year was $725,800 (allocated $239,500 to land and $486,300 to improvement).

[4] In support, Freehold used CHSI's responses to standard exemption interrogatories. For Question 2, CHSI stated that it was incorporated in New Jersey on October 3, 1983 under the "New Jersey Business Corporation Act, N.J.S. 14A1-1 *et seq*." CHSI objected to Question 4 (basis for claiming tax exemption) on grounds the question sought confidential/ proprietary information and called for

On July 21, 2017, this court denied Freehold's partial summary judgment motions on grounds more facts were needed. Within 20 days, Freehold moved for reconsideration. On January 5, 2018, the court vacated its prior Orders and granted the motions on grounds CHSI's for-profit status barred tax exemption for the Subject. The Orders also set the matters for future trial on valuation.

On July 18, 2018, this court issued an opinion in RMC dismissing the omitted assessment complaints filed by the plaintiff taxing district therein, Borough of Red Bank, for tax years 2014 and 2015. It summarized its findings thus:

> the court finds that under the plain language of the controlling statute, N.J.S.A. 54:4-63.26, there must be a demonstrated change in use as a condition precedent for a local property tax exemption to cease, after which the tax must be imposed on a pro-rated basis. The Borough's reliance on AHS Hosp. Corp., an[] unrelated litigation in which the court denied tax exemption to an unrelated hospital, as a basis for its "belief" that defendant must be taxed for 2014 and 2015 under the general omitted assessment law, does not satisfy the statutory requirement of N.J.S.A. 54:4-63.26. In light of this conclusion, the court need not decide whether, after cessation of the exemption, an assessment can be imposed only in the tax year of the exemption cessation, or for the "next succeeding year" as allowed in the general omitted assessment law. The court therefore dismisses the Borough's appeals.
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> [30 N.J. Tax at 553.]

Nonetheless, the court rejected the Borough's several arguments on the propriety of using the general OA law instead of the EC provisions as this would amount to a "circumvention of the tax appeal process." The court held:

> It is the assessor's constitutional and statutory obligation when valuing property and deciding that a tax exemption is warranted, to make necessary inquiries in this regard. If such an inquiry justifies

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a legal conclusion, but stated that documents in this regard would be produced in the future under R. 4:17-4(d).

> a conclusion that the property is not entitled to tax exemption because it was not being used for the statutorily permitted non-profit purposes, then the assessor, based on the information available to him or her, can revoke the exemption, impose an assessment under the EC Provisions for any portion of the tax year for which the exemption was granted, and thereafter impose regular assessments. If no such assessment is imposed under the EC Provisions, and the exemption is granted or continued, the Borough must, like any other aggrieved taxpayer, timely file an appeal. If the Borough was under a "belief" that RMC was using the [property] . . . for profit-making purposes, it could have sought a revocation of the exemption by timely filing an appeal. The Borough cannot, now, under the guise of the general omitted assessment law, litigate the propriety of the assessor's grant of exemption for tax years 2014 and 2015. Just as a taxing district is entitled to rely upon the finality of an un-appealed assessment, so too can a property owner rely upon the finality of a tax exemption which was not appealed, until there has been an affirmative change of either ownership or of use.
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> [Id. at 564.][5]

On August 8, 2018, above referenced counsel substituted in as counsel for CHSI. On October 26, 2020, and more than two years after this court's January 5, 2018 Orders, CHSI filed the instant motions for reconsideration seeking a dismissal of Freehold's omitted assessment complaints for tax years 2014 and 2015 based on this court's dismissals of the omitted assessment complaints in RMC.

ANALYSIS

A. Reconsideration

A motion for reconsideration which seeks to "alter or amend a judgment or order shall be served not later than 20 days after service the judgment or order upon all parties by the party obtaining it." R. 4:49-2. Such motion "shall state with specificity the basis on which it is made,

[5] The Appellate Division decision's unpublished affirmance was issued on March 14, 2019, and the New Jersey Supreme Court denied leave to appeal on June 21, 2019.

including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred." Ibid. Note that while the "provisions" of R. 4:49-2 applies to "Tax Court matters," the 20-day period begins "after the date of the judgment or order." See R. 8:10. Under the 20-day rule, whether under R. 4:49-2 or R. 8:10, CHSI's motion is untimely.

CHSI is correct that the 20-day time limit of R. 4:49-2 does not apply to interlocutory orders. See generally Lombardi v. Masso, 207 N.J. 517, 534-35 (2011). Orders granting summary judgment can be interlocutory. Id. at 536 n.5 (disapproving the ruling in Zeiger v. Wilf, 333 N.J. Super. 258, 269-70 (App. Div. 2000) that "an interlocutory grant of summary judgment is final").

However, "orders granting summary judgment, if dispositive of one of the claims asserted, are not intrinsically interlocutory and are only so viewed when not dispositive of all claims in the case." Rendon v. Kassimis, 140 N.J. Super. 395, 398 (App. Div. 1976). If the court enters a "final judgment" as to such motions under R. 4:42-2 after a determination "that there is no just reason for delay," then the order is "final and thus appealable without leave." Ibid. Cf. also Leonardis v. Bunnell, 164 N.J. Super. 338, 340 (App. Div. 1978) ("when a judgment does not dispose of all the issues between all the parties, the trial judge should not designate it as a final judgment under R. 4:42-2 unless he determines there is no just cause for delay"). Note that the trial court "must spell out [its] reasons for utilizing R. 4:42-2," for clarity during appellate review. Ibid. A "conclusory statement that it is a final judgment, when in fact it is interlocutory, will not turn an otherwise partial summary judgment into a final judgment." Ibid. (citations omitted).

Here, the court did not title or deem the January 5, 2018 Orders as final since valuation of the Subject, an issue raised by both parties, was still pending. Nor did the court determine that its Orders should be designated as final judgments that could be issued without delay under R. 4:42-2. Thus, the January 5, 2018 Orders are interlocutory to which the 20-day limit would not apply.

The next question is whether the bases for CHSI's motions warrant reconsideration, the bases being that the court never addressed the validity of Freehold's omitted assessment appeals and thereby "overlooked" its decision in RMC. The court agrees with Freehold that this issue was never presented for review, thus, the court cannot reconsider what it never considered before. Additionally, the court could not have overlooked its decision in RMC since that was issued over seven months *after* its January 5, 2018 Orders in the instant matters. Moreover, and CHSI does not dispute, the reasons for the court's grants of partial summary judgment to Freehold was, and is still proper, namely, that the Subject was not statutorily entitled to tax exemption because it was owned by a for-profit entity for the tax years at issue. Thus, CHSI's reconsideration motions fail to establish "a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred." R. 4:49-2.

Therefore, and while CHSI's reconsideration motions are not untimely due to the interlocutory nature of the court's January 2018 Orders, substantively the motions do not state a reason for reconsideration under R. 4:49-2.

CHSI correctly points out that it can file a motion at any time calling into question the court's subject matter jurisdiction. See Murray v. Comcast Corp., 457 N.J. Super. 464, 470 (App. Div. 2019). This is exactly what it is seeking here via its motions and solely due to the court's ruling in RMC, since it does not dispute that the Subject is owned by a for-profit entity, which status would necessarily disqualify it from tax exemption. Still, the consequence of such a motion, i.e., the court's lack of subject-matter jurisdiction, whether granted or denied, would impact this court's January 5, 2018 Orders. That is, CHSI's motions raise the issue of whether the court had the right in the first place to revoke the tax exemption for the Subject for tax years 2014 and 2015.

Therefore, rather than dismissing CHSI's current motions filed under R. 8:10 and R. 4:49-2, the court will, for purposes of efficiency, treat them as having been filed pursuant to R. 1:6-2 (since the return date of the motions was November 13, 2020, thus, 18 days after they were filed on October 26, 2020) and as seeking Orders dismissing Freehold's complaints for tax years 2014 and 2015 due to lack of subject matter jurisdiction in light of the rulings in RMC.

B. Subject Matter Jurisdiction

It is undisputed that the Subject used to be tax exempt prior to its ownership transfer in 2008 to CHSI. Unquestionably, the Subject was not entitled to tax exemption for and from tax year 2008 because it was then, and is still owned by CHSI, a for-profit entity. See N.J.S.A. 54:4-3.6 (exemption for "buildings actually used in the work of associations and corporations organized exclusively for hospital purposes"); Paper Mill Playhouse v. Township of Millburn, 95 N.J. 503, 506 (1984) (to qualify for tax exemption, the claimant must satisfy three criteria the first of which is that it "must be organized exclusively for" the statutorily stated tax exempt purpose).

It is also undisputed that CHSI alerted Freehold's assessor as to the 2008 ownership change in the Subject when filing the October 2008 statement for continuation of tax exemption. The assessor was aware of the sale at that time (or even in February of 2008 when the assessor marked the sale as NU4). Yet the Subject continued to receive tax exemption, which exemption was challenged only in 2016 by Freehold's complaints.

CHSI argues that the grant of exemption even after actual or implied knowledge of the ownership change shows that the assessor made a conscious and subjective decision that the Subject merited a tax exemption. If Freehold wanted to challenge the granted exemption, it should have filed timely appeals under N.J.S.A. 54:3-21. Per CHSI, this is the same relief that is afforded to a property owner who/which was denied a tax exemption or who/which did not timely seek a

tax exemption. This course of action, CHSI argues, should be followed even if Freehold's assessor granted the tax exemption mechanically, i.e., without exercising his/her obligatory review of the application for exemption continuation, thus, did not actually verify the organizational status of the new owner. Therefore, contends CHSI, Freehold cannot "use [] the general omitted assessment law" for tax years 2014 and 2015 as it "is both improper and fails to give the Court jurisdiction to hear the appeals" pursuant to RMC.

Freehold argues that the exemption denials herein were proper because (1) these matters do not involve a change in use as was the case in RMC; (2) the Subject's ownership by a for-profit entity an undisputed known fact for purposes of N.J.S.A. 54:4-63.26 unlike in RMC; (3) public policy, which this court acknowledged in RMC is important, demands denial of the exemption, and (4) tax exemption statutes are construed narrowly and against a taxpayer.

In RMC, the parties "agree[d] that the starting point of the analysis is application of the EC[]" statute but disagreed as to the "scope and the procedural manner to effectuate the exemption revocation." 30 N.J. Tax at 560. After explicating the meaning of the verbiage in the EC provisions (deeming tax-exempt property which ceases to be so as "omitted" and restoring it to the tax rolls as "added") the court stated that it should first "decide a preliminary, but fundamental issue: was there a change in use for the ECS to be even applicable" before deciding whether "previously exempt property can be assessed in '[a]ny tax year or the next succeeding tax year,' as provided under the general [OA] law." Id. at 562. Because the only basis for the omitted assessment appeals was "the ruling in AHS Hosp. Corp." the court dismissed the same. Id. at 562-68.

In doing so the court also disapproved overlooking the EC provisions since such a strategy would allow for a "complete circumvention of the tax appeal process," and ruled that timely

appeals should have been filed for each such tax year against the assessor's grant of tax exemption just "like any other aggrieved taxpayer." Id. at 564. The taxing district could not "under the guise of the general omitted assessment law, litigate the propriety of the assessor's grant of exemption for tax years 2014 and 2015." Ibid.

In light of the finding that the taxing district could not have revoked the exemption under the EC provisions, the court did not find the need to address the hospital-taxpayer's arguments that application of "the substantive provisions of the" general OA law, i.e., "imposing an assessment for the tax year, or the next succeeding year, is impermissible." Id. at 568. Nor was it necessary to address the cases cited by the taxing district as supporting imposition of omitted assessments. Id. at 568-69.

Nonetheless, the court was unpersuaded that the general OA law applies. This was because "a plain reading of the EC Provisions does not support imposition of an assessment in a tax year other than the year in which the exemption ceased." Id. at 568. This is especially where another EC provision, N.J.S.A. 54:4-63.28, "which ties the period of assessment to the time the exemption ceased does not incorporate, or reference" the phrase "in the next succeeding year" which is used in the general OA law.[6] 30 N.J. Tax at 568 (internal quotation marks and citation omitted).

[6] See N.J.S.A. 54:4-63.12 ("In any year or in the next succeeding year, the county board of taxation may, in accordance with the provisions of this act, assess any taxable property omitted from the assessment for the particular year"); N.J.S.A. 54:4-63.31 ("In any tax year or in the next succeeding tax year the assessor of any taxing district, may in accordance with the provisions of this act, assess any taxable property omitted from the assessment list for the particular tax year. The taxable value of such property shall be determined as of October 1 of the preceding year"). See also Borough of Freehold v. Nestle USA, 21 N.J. Tax 138, 147 (Tax 2003) (under the general OA law, omitted assessments "may be imposed in the year in which the property should have been assessed or in the next succeeding year.").

The court agrees with the ruling in RMC that only the EC provisions apply as to when and how a property which was tax-exempt becomes taxable. This is clear from its analysis therein where the court held that (1) the EC provisions were enacted after the general OA law, id. at 556-67; (2) the terms "omitted" and "added" in the EC provisions were used for procedural purposes rather than as substantive terms of art or law, id. at 561;[7] (3) the EC provisions require a change (in use or ownership) to be triggered unlike the general OA "where the only condition for imposing an assessment is that a taxable property, which has always been assessed as such, was somehow omitted from being assessed and taxed," id. at 562; and (4) property which ceases to be tax exempt should be taxed "under, and in compliance with the EC Provisions, which require a fact-based determination to have been made that the property's use changed in the tax year the exemption was granted (or in the 3-month period of the pre-tax year)." Id. at 565. In this connection, the court also rejected analogizing the EC provisions to the statute permitting imposition of rollback taxes for previously farmland-assessed properties. See id. at 566-67. The sole applicability of the EC provisions was also the basis for why that court did not need to explore the applicability of the general OA law, or why it was unpersuaded that the few cases allowing such assessments did not apply since none addressed the controlling statute: the EC provisions. Id. at 568 and n.10.

Thus, and for purposes of the instant motions, the holdings in RMC that the EC provisions are the exclusively applicable statutory scheme to restore a previously tax exempt property to the tax rolls, both as to the why (change of ownership or use, N.J.S.A. 54:4-63.26), and the how

[7] See also 18 Washington Place Assoc. v. City of Newark, 8 N.J. Tax 608, 612 (Tax 1986) (the EC provisions "explicitly adopt" the added assessment law "as the procedural provisions applicable to assessments made when previously exempt property is restored to the tax rolls").

(N.J.S.A. 54:4-63.28; 4-63.29), fully apply here. Therefore, the court finds, the general OA law does not apply to property which ceases to be tax exempt.

Here, undoubtedly there was a change in ownership of the Subject in January of 2008. Under the EC provisions, the Subject should have been restored to the list of taxable properties in 2008. This was not done. However, Freehold cannot resort to the general OA law to revoke its assessor's grant of tax exemption for tax years 2014 and 2015. Rather, as was held in RMC, it should have timely appealed the grant of tax exemption under N.J.S.A. 54:3-21 for tax years 2014 and 2015. It did not, which then deprived this court of subject matter jurisdiction to decide the merits of those granted exemptions

Freehold is correct that RMC was factually distinct (entity owner was non-profit and there was no proof of change in use to substantiate the OA appeal filings), and that ownership of property by a for-profit entity is an almost automatic disqualification for tax exemption. Regardless, the court's interpretation of the EC provisions does not permit resorting to the general OA law to try and capture the tax for the prior years for which the assessor had granted tax exemption. Because the EC provisions control as being the "exclusive method for restoring previously exempt property to the tax rolls as a result of a mid-year change in ownership or use," see 18 Washington Place, 8 N.J. Tax at 612, and do not contain the same language as the general OA law, the court finds that Freehold's attempt to overcome its failure to file timely appeals challenging the Subject's tax exemption through the general OA law is not supportable.

The court agrees with Freehold that tax exemption statutes must be construed strictly and against the taxpayer. However, statutes of limitations are also construed strictly and against both the taxpayer and the taxing district. And while it can be said that CHSI benefitted unfairly by not having paid tax on the Subject, it can also be said that CHSI fairly relied upon the exemption grants

since actions of the assessor (and here even the County Board in refusing to place omitted assessments) are deemed presumptively correct, especially where CHSI promptly advised the assessor of the change in ownership and the assessor viewed the sale deed to mark it with an NU4 code. Freehold, like any other governmental authority is held to the "turning square corners" principle.

The court also agrees with Freehold that the public policy is that all taxable properties should share the tax burden.[8] Undoubtedly, CHSI benefitted from not paying taxes on the Subject for at least eight years, which means that other taxpayers were burdened with that tax amount. However, this general policy should be not be wielded so broadly as to overcome, overlook, or excuse the taxing district's obligation to file timely appeals when appropriate (such as here where the assessor was notified of the ownership change in 2008 yet granted the exemption and placed the Subject on the tax exempt list), and permit resorting to the general OA law to rectify its failure to appeal.[9] Even the general OA law has been interpreted so that it does not permit a run around of filing timely appeals in certain instances (such as where an assessor tries to change value after

[8] In RMC, the court noted that "imposition of an omitted assessment for the tax year or the next succeeding year, may not be unreasonable" and that "[p]ublic policy also may support imposing an assessment in the 'next succeeding year,' if the same was omitted to be placed in the tax year in which the exemption was lost." 30 N.J. Tax at 569 (referencing the two cases cited by the taxing district therein: City of Camden v. Camden Masonic Ass'n, 9 N.J. Tax 331 (Tax 1987), aff'd, 11 N.J. Tax 88 (App. Div. 1989), a tax exemption case, and New York State Realty & Terminal Co., 21 N.J. 90, 97 (1956), a non-tax exemption case). However, neither of the cited cases applied the EC provisions, therefore, do not assist the court here.

[9] This is exactly what Freehold did for tax years 2016 through 2018. It is also clear that like the taxing district in RMC, here also Freehold filed appeals seeking to impose omitted assessments only after the June 2016 ruling in AHS Hosp. Corp., regardless of the fact that Freehold's pleadings in this connection did not reference this case. Up until that case was decided, there was no attempt to revoke the Subject's tax exemption.

the assessment date) although the consequence is the same: an unequal share of the tax burden, which would then implicate the same public policy concerns.[10]

In sum, the court finds that the rulings in RMC that there is a deliberate legislative scheme to restore a tax-exempt property to a taxable property, viz., the EC provisions, equally apply here. Although they are contained within Article 6B, Assessment of Omitted Property, the EC provisions are separate and independent of the general OA law, and specify both the reasons for an exemption loss, and the time and manner in which the exempted property should be restored to the tax rolls. The EC provisions do not allow imposing omitted assessments, and then for a tax year in which such assessment was omitted or the next succeeding year, as the general OA laws do. If an assessor fails to restore a tax-exempt property to the tax list under the EC provisions, the sole remedy for the taxing district is to file timely appeals under N.J.S.A. 54:3-21, just as it would be for a taxpayer if its property is denied a tax exemption. Thus, when Freehold's assessor chose to grant a tax exemption to the Subject for tax years 2014 and 2015 when this should not have been done, Freehold should have filed timely appeals under N.J.S.A. 54:3-21 (just as it did for tax years 2016-2018). It cannot use the substantive general OA law to circumvent the timely appeal filing obligation even under the facts here.

Finally, the court rejects Freehold's request for sanctions against CHSI for the delay in filing the motions. Although the court does not approve of the over-one-year delay (since the decision in RMC became final in June of 2019), there is nothing to show how the delay was so prejudicial to the settled expectations of Freehold especially when it conceded that the court's

[10] Note that the Subject was not omitted to be assessed as required by the general OA law. See supra n.6. Rather, it was assessed and placed on the tax-exempt list. See also the EC provision in this regard, N.J.S.A. 54:4-63.27.

January 2018 Orders were interlocutory, and when it continued to pursue its valuation claims. There were no case management orders issued by the court setting deadlines for filing motions as to the exemption issue, nor was there anything to show that CHSI was contumacious in disregarding the court's orders or directions in this regard (none existed).

CONCLUSION

For the aforementioned reasons, the court grants CHSI's motions to dismiss the 2014 and 2015 omitted assessment appeals because this court lacks subject matter jurisdiction to decide the same based on the rulings in RMC. As a result, the court's January 5, 2018 Orders are superseded. Because the above-captioned omitted assessment appeals are dismissed for lack of subject matter jurisdiction, the valuation aspect of the Subject, a separate cause of action in the omitted assessment appeals cannot survive. The court will issue final orders and judgments dismissing with prejudice, Freehold's omitted assessment appeals for tax years 2014 and 2015.