BIENNIAL REPORT OF THE

SUPREME COURT COMMITTEE ON THE TAX COURT

2002-03 and 2003-04 COURT YEARS

SUBMITTED TO THE SUPREME COURT OF NEW JERSEY

January 15, 2004

Table of Contents

Page

INTRODUCTION 1

I. RULE AMENDMENTS RECOMMENDED FOR ADOPTION 2

A. Proposed Amendment to R. 8:3-1—Separate Complaints for Different Tax Years 2

B. Proposed Deletion of Tax Court DCM Program R. 8:6-8—Initial Case Management Conference 4

C. Proposed Amendment to Tax Court DCM Program R. 8:6-9—Mandatory Settlement Conference 5

D. Proposed Amendment to Tax Court DCM Program R. 8:8-5—Adjournments 7

II. RULE AMENDMENTS CONSIDERED AND REJECTED 9

A. Signature Stamps 9

B. Small Claims Jurisdiction—Vacant Land 9

III. OTHER ACTIONS AND RECOMMENDATIONS 10

A. Statewide Expansion of Tax Court DCM Program 10

B. Availability of Unpublished Opinions 12

C. Local Property Tax Small Claims Jurisdiction 13

IV. LEGISLATION 16

A. Legislation Supported 16

B. Legislation Opposed 17

1. A.1806—Limiting Local Property Tax Appeals 17

2. A.1809—Limitation on Judiciary 18

3. A.1965—Limitation on Judiciary 19

C. Legislation Proposed 20

1. Proposed Amendment of N.J.S.A. 54:3-21 to Permit Direct Appeals of Class 4 Properties 20

2. Proposed Amendment of N.J.S.A. 54:3-27 to Authorize Relaxing Tax Payment Requirement 24

3. Reorganization and Revision of N.J.S.A. 54:4-3.6 to Clarify Property Exemption Applicable to Nonprofit Organizations 27

4. Proposed Amendment of N.J.S.A. 54:51A-10 and N.J.S.A. 54:51A-19 to Clarify Tax Court Fees 32

V. MATTERS HELD FOR CONSIDERATION 34

VI. MEMBERS OF THE SUPREME COURT COMMITTEE ON THE TAX COURT 35

INTRODUCTION

The Supreme Court Committee on the Tax Court (the "Committee") is comprised of members of the bench and tax bar as well as representatives of taxpayers' groups, local, county and state tax administrators and others concerned with the administration and review of the New Jersey tax laws. The Committee held five meetings during the period beginning September 1, 2002 and ending January 7, 2004. Numerous topics and issues were covered and discussions were detailed and vigorous.

In November 2002, the Chairman appointed three standing subcommittees: the DCM Rules Subcommittee, chaired by Peter J. Zipp, the Miscellaneous Rules Subcommittee, chaired by Susan A. Feeney, and the Legislation Subcommittee, chaired by John R. Lloyd. Other subcommittees were appointed on an as-needed basis.

The Committee continued to engage in a comprehensive examination of the rules governing practice in the Tax Court as well as a variety of other issues. Specifically, the Committee discussed issues relating to the review of state and local tax assessments, proposed rule amendments, recommended legislation, case management and court procedures, court forms, small claims procedures and published and unpublished Tax Court opinions. The project which consumed most of the Committee's time was the Committee's continuing review and study of the ongoing Local Property Tax Differentiated Case Management Pilot Program and the related Tax Court DCM Program Rules. The Committee's work on the DCM Pilot Program resulted in (a) the proposed amendments to the Tax Court DCM Program Rules and (b) the statewide expansion of the DCM Pilot Program recommended in this report.

PART I — RULE AMENDMENTS RECOMMENDED FOR ADOPTION

The Committee recommends to the Supreme Court the following rule amendments. All deletions and new language are indicated in bold text.

A. Proposed Amendment to R. 8:3-1—Separate Complaints for Different Tax Years.

R. 8:3-1(b) has provided that separate complaints must be filed for each separately assessed property in local property tax cases. The Committee proposes to expand this rule by including a new subparagraph (c) to provide that in most local property tax cases, a separate complaint must be filed for each tax year for each separately assessed property. This change will allow the Tax Court Administrator to track outstanding tax years and to determine applicable filing fees. The text of the proposed amendment follows.

8:3-1. Commencement of Action

(a) . . . no change

(b) . . . no change

(c) In local property tax cases, except for a complaint made pursuant to N.J.S.A. 54:51A-7 to correct an error affecting more than one tax year and a complaint made pursuant to N.J.S.A. 54:4-23.8 relating to the imposition of the farmland rollback tax, a separate complaint must be filed for each tax year for each separately assessed property, and a separate complaint must be filed each tax year for a group of properties permitted to be included in a single complaint as provided by R. 8:3-5(a)(2), (3) and (4).

Note: Adopted June 20, 1979 to be effective July 1, 1979. Former rule redesignated as paragraph (a) and paragraph (b) adopted July 22, 1983 to be effective September 12, 1983; paragraph (c) added _____, 2004 to be effective September 1, 2004.

B. Proposed Deletion of Tax Court DCM Program R. 8:6-8—Initial Case Management Conference.

Continued comprehensive review by the Committee of the Tax Court DCM Program Rules has produced several proposed amendments in this report. Based upon input from the bench and bar as well as the Tax Court Management Office, the Committee felt that the initial case management conference requirement set forth in Tax Court DCM Program R. 8:6-8 was not fulfilling its intended purpose and was not providing meaningful interaction between parties or producing any significant impact on the progress of the case. Accordingly, the Committee proposes to eliminate the initial case management conference and delete this rule in its entirety.

C. Proposed Amendment to Tax Court DCM Program R. 8:6-9—Mandatory Settlement Conference.

The Committee proposes to preserve and consolidate in Tax Court DCM Program R. 8:6-9 certain aspects of Tax Court DCM Program R. 8:6-8 which would be deleted by the proposed deletion of that rule in Part I B. The Committee also proposes to require that counsel certify that answers to initial interrogatories have been provided and to refine the date of the mandatory settlement conference. The text of the proposed amendment follows.

8:6-9. Local Property Tax Cases; Mandatory Settlement Conference

In all local property tax cases assigned to the standard track, the parties shall hold a mandatory settlement conference [approximately 5 months] not later than four (4) months before the scheduled trial month as set forth in the case management notice. The date for the mandatory settlement conference shall be fixed by the designated case manager and shall be provided to the parties in the form specified by the Tax Court. Counsel for all parties and the assessor or the taxing district's appraisal consultant shall be present at the mandatory settlement conference which shall be conducted in person at the office of the municipal assessor or such other place as agreed upon by the parties. [Results of the mandatory settlement conference shall be reported by the parties to the case manager in the form specified by the Tax Court within 10 days of the mandatory settlement conference.] At least seven (7) days prior to the date fixed for the mandatory settlement conference, plaintiff's counsel must furnish to defendant's counsel an appraisal by plaintiff's appraisal expert in the form specified by the Tax Court or a demand for reduction in assessment with support therefor. Results of the mandatory settlement conference shall be reported by the parties to the case manager in the form specified by the Tax Court within 10 days of the mandatory settlement conference. The mandatory settlement conference report shall include certifications that initial standard form interrogatories have or have not been served and answered by each party. The parties shall have ten (10) days from the date of notice of noncompliance to comply with the requirements of this rule. The failure of any party to receive a notice of noncompliance shall not relieve the party of the duty to comply.

Note: DCM Program Rule adopted October 7, 1996 to be effective January 1, 1997; amended October 12, 1999 to be effective January 1, 2000; amended _____, 2004 to be effective September 1, 2004.

D. Proposed Amendment to Tax Court DCM Program R. 8:8-5—Adjournments.

The Committee proposes to amend Tax Court DCM Program R. 8:8-5 to provide for more meaningful interaction with the court when a party fails to comply with the mandatory settlement conference report requirements of Tax Court DCM Program R. 8:6-9. The text of the proposed amendment follows.

Rule 8:8-5. Adjournments

(a) Except as provided in subsection (b) herein, adjournments of pretrial conferences and trials will be granted only for good cause shown and may be subject to sanctions as provided by R. 1:2-4(a). Routine adjournments will not be permitted. [A plaintiff's f] Failure to file the mandatory settlement conference report or certify that answers have been provided by all parties to standard form interrogatories shall result in a mandatory in-person conference with the assigned trial judge [comply with R. 8:6-8 and/or 8:6-9 shall result only in denial of a request for an adjournment of the scheduled trial date]. [Notwithstanding the preceding sentence,] [t]The sanctions as provided by R. 1:2-4(a) other than dismissal of the complaint shall also be applicable to any party who without good cause fails to attend a mandatory settlement conference scheduled pursuant to R. 8:6-9.

(b) In standard track local property tax cases having an assigned trial date within fourteen (14) months after the date of the filing of the complaint, the case manager, having confirmed that the parties have complied with the requisite procedure of [R. 8:6-8 and] R. 8:6-9, shall grant a request for an adjournment by the non-defaulting party within thirty (30) days after the scheduled mandatory settlement conference pursuant to R. 8:6-9, and shall schedule the trial after the fourteenth (14th) month but not later than the eighteenth (18th) month following the filing of the complaint.

Note: Adopted June 10, 1979 to be effective July 1, 1979; former rule amended and designated paragraph (a) and new paragraph (b) DCM Program Rule adopted October 7, 1996 to be effective January 1, 1997; amended _____, 2004 to be effective September 1, 2004.

PART II—RULE AMENDMENTS CONSIDERED AND REJECTED

Amendments to the rules were considered and rejected by the Committee, as follows:

A. Signature Stamps.

The Committee considered and rejected a proposal to amend the rules to allow for the application of a signature stamp on pleadings in lieu of an actual, original signature by counsel on those pleadings. The Committee felt that the original signature of counsel on pleadings is still necessary to comply with existing court rules and to confirm and certify that counsel has indeed reviewed the entire pleading.

B. Small Claims Jurisdiction—Vacant Land.

The Committee discussed and rejected a possible amendment to R. 8:11 to allow vacant land zoned as residential to be considered a small claims matter.

PART III — OTHER ACTIONS AND RECOMMENDATIONS

The Committee took the following actions and/or made the following recommendations:

A. Statewide Expansion of Tax Court DCM Program

By Order dated October 7, 1996, based upon comprehensive recommendations of the Committee, the Supreme Court authorized the establishment of a project in Bergen County to be known as the "Bergen County Property Tax Differentiated Case Management Pilot Program" and adopted a set of differentiated case management ("DCM") rules applicable to the Bergen County Pilot Program. The Bergen County DCM Pilot Program was applicable to only local real property tax cases (as opposed to state tax cases) and was effective and commenced on January 1, 1997.

The initial success of the Bergen County DCM Pilot Program, coupled with upgraded computer hardware and software in the Tax Court Management Office, enabled the expansion of the DCM Pilot Program to Hudson County. Based upon Committee recommendations to the Supreme Court in a submission dated September 1, 1999, by Order dated October 12, 1999, the Supreme Court authorized expansion of the DCM Pilot Program to Hudson County effective January 1, 2000. In that same Order, the Supreme Court also changed the name of the Pilot Program to the "Local Property Tax Differentiated Case Management Pilot Program" and modified the name of the DCM Rules to the "Tax Court DCM Program Rules."

Since its implementation, the Tax Court Management Office reports that the DCM Pilot Program has generally improved the quality of case processing in Bergen and Hudson Counties with less judicial involvement. Since adoption of the initial DCM Pilot Program, the Tax Court has continued to maintain a DCM working group and the Committee has continued to maintain its own DCM Subcommittee in order to monitor and seek improvements to the DCM Rules. Based upon the recommendations of these groups, the Committee has recommended, and the Supreme Court has adopted, several amendments to the Tax Court DCM Program Rules since their original

adoption. As a result of continuing input from the Tax Court Management Office concerning new and improved capacity to manage the DCM Pilot Program and continuing input from the Tax Court's DCM working group and the Committee's DCM Subcommittee, the Committee recommends to the Supreme Court that the Local Property Tax Differentiated Case Management Pilot Program be expanded to cover all local property tax cases filed in the Tax Court. This statewide expansion should be made effective January 1, 2005 for tax appeals contesting tax assessments for 2005 and later years.

The Committee recommends that the Tax Court DCM Program Rules continue to be segregated from the rules in Part VIII generally governing the practice and procedure in all actions in the Tax Court. After receiving and reviewing input concerning the impact of the DCM Pilot Program on a statewide basis, the Committee will then be in a position to recommend whether the Tax Court DCM Program Rules are to be permanently merged into the regular rules set forth in Part VIII. The ultimate objective of the program is to have efficient and uniform statewide rules and practices for the management of all local property tax appeals.

B. Availability of Unpublished Opinions.

The Committee continues to recommend that the summaries of any unpublished opinions prepared by the Tax Court be made available to the public on the internet. It is the understanding of the Committee that the Administrative Office of the Courts is still considering the issue of publishing case summaries of this sort. When one party in a litigation is a governmental entity, unpublished opinions addressing a particular issue are frequently available to the governmental party but not the private litigant because the governmental entity was previously a party in a case with that issue. This is particularly so in state tax cases before the Tax Court where the New Jersey Division of Taxation is always the defendant. The Committee believes that public access to summaries of unpublished opinions will eliminate any actual or perceived inequalities in the availability of Tax Court information and decisions. The Committee also realizes that rules differentiating between the authority of and citation to unpublished versus published opinions is essential if the designation of some but not all opinions for publication is to continue. It would appear that the publicly circulated state law journals now summarize all unpublished opinions and that the Tax Court should not ignore this reality.

C. Local Property Tax Small Claims Jurisdiction.

In its Biennial Report to the Supreme Court for the 1998-1999 and 1999-2000 Court Years, the Committee recommended that the small claims jurisdiction of the Tax Court be modified in local property tax cases. The Committee addressed what it felt to be an increasing problem concerning the improper designation of filed local property tax cases as small claims in order to avoid the higher filing fee and the more formal discovery requirements associated with the filing of regular cases. At that time, small claims jurisdiction for local property tax cases was based upon the amount of tax in controversy, which could not exceed the sum of $2,000. However, given the interaction of factors such as value, ratios and tax rates, the tax amount at stake was frequently not readily ascertainable by the Tax Court Management Office, thereby making classification difficult at the time of intake. The Committee recommended that the jurisdictional determination for local property tax small claims cases be changed from a dollar amount to a jurisdiction based upon property classification.

The Committee's recommendations to modify R. 8:3-4(b) and (c), R. 8:11 and R. 8:12(b) and (c)(2) were adopted by the Supreme Court. The adopted rules limit the local property tax small claims jurisdiction of the Tax Court to 1 to 4 family residences ("class 2 property," N.J.A.C. 18:13-2.2) and farmland residences ("class 3A farm residences," N.J.A.C. 18:12-2.2). The prior "$2,000 tax in controversy limitation" was eliminated. See 1998-1999 and 1999-2000 Biennial Report pages 3-5, 10-17. The $2,000 limitation in non-local property tax cases remains.

Upon adoption of these rules the Supreme Court requested a report from the Presiding Judge of the Tax Court and the Tax Court Administrator as to the operation of the revised rules and procedure. The Presiding Judge and the Tax Court Administrator did provide a report dated January 8, 2002 which set forth statistical evidence of two years which suggested that the adoption of the new small claims jurisdiction rules were having their intended effect. Although

the Committee concluded in its Biennial Report to the Supreme Court for the 2000-01 and the 2001-02 Court Years that it saw no need to further modify the small claims jurisdiction of the Tax Court, the Committee did note in Part V of its report that it would continue to monitor filing data in the small claims and regular divisions of the Tax Court in order to continue to review small claims jurisdiction.

While the Committee does not propose any changes to small claims jurisdiction in this report, it brings to the attention of the Supreme Court that the Committee received input from the bar which suggests that, in certain cases, owners of small commercial properties may be deterred from seeking relief in the Tax Court due to the more complex procedures and higher costs associated with the filing of a case in the regular division of the Tax Court. The Committee received, reviewed and discussed a report from its Miscellaneous Rules Subcommittee, which proposed to make new modifications to the small claims jurisdiction of the Tax Court in order to allow access to the small claims division by certain small commercial property owners. This proposal included returning to an amount-based jurisdiction without regard to the classification of the property. The Subcommittee recommended that small claims jurisdiction be available if the tax burden for the prior year's taxes was $15,000 or less based upon a tax bill, notice of assessment or other documentary proof issued by the taxing authority. By specifying an amount which is readily ascertainable and can be certified by the filing party, the proposal seeks to avoid the classification and filing fee problems which resulted under the prior rule.

The Committee considers full access to the Tax Court by all taxpayers to be a significant issue. The Committee will continue to discuss and review the small claims jurisdiction of the Tax Court and the Subcommittee proposal. The Committee will also seek additional information and input from the bar and suggests that the Taxation Section of the New Jersey State Bar Association conduct a bench/bar conference on this issue. The Committee considers small

claims jurisdiction to be a carryover item and hopes to definitively address this issue in its next biennial period.

PART IV — LEGISLATION

A. Legislation Supported.

At its various meetings, the Committee did not vote to support any legislative bills pending in the Senate and/or the Assembly.

B. Legislation Opposed.

At its various meetings, the Committee voted to oppose the following legislative bills pending in the Senate and/or Assembly. The Committee's positions on these pending bills were communicated to the Administrative Office of the Courts.

1. A.1806—Limiting Local Property Tax Appeals.

This bill proposes to amend N.J.S.A. 54:3-21 in order to eliminate a property owner's right to appeal the assessed value of his or her property if an appeal was filed in the previous three tax years, unless the assessed value has increased by ten percent or more. The Committee opposes this legislation because it is an unfair procedural barrier to assessment review and access to the Tax Court. The Committee believes the current tax appeal system works effectively to eliminate frivolous tax appeals and that a complete bar of certain tax appeals is not a reasonable way to regulate the tax appeal process.

2. A.1809—Limitation on Judiciary.

This bill proposes to amend N.J.S.A. 54:1-35(c)(6), 54:1-35.35 and 46:4-1(d) in order to make several changes to assessment practices for real property in New Jersey and includes a provision to prevent judges of the Tax Court from substituting their own opinion of value for the opinion of expert witnesses without justifying the Court's valuation process. Judges rely upon many factors, including conclusions of experts, in determining the valuation of property for local property tax purposes. Generally, the Committee believes that the local property tax appeal system in New Jersey works efficiently and effectively and is a model for other tax court systems throughout the country. The Committee opposes this legislation because (i) these changes are generally not necessary and (ii) the section addressing judicial discretion is an unwarranted intrusion into the judicial decision-making process. Judges of the Tax Court are by statute required to have special qualifications, knowledge, and experience in matters of taxation. N.J.S.A. 2B:13A-6(b). To have a statute require that judges have an expertise which another statute restrains them from using does not merit further comment. (See Comment to A.1965-Limitation on Judiciary, page 19 of this report.)

3. A.1965—Limitation on Judiciary.

This bill proposes to amend N.J.S.A. 2A:83-1 in order to prevent judges of the Tax Court from substituting their own opinion of value for the opinion of expert witnesses without justifying the Court's valuation process and is the same as the specific provision in A.1809 discussed supra. Judges rely upon many factors, including conclusions of experts, in determining the valuation of property for local property tax purposes. The Committee believes that the local property tax appeal system in New Jersey works efficiently and effectively and is a model for other tax court systems throughout the country. The Committee opposes this legislation because it is an unwarranted intrusion into the judicial decision-making process. (See Comment to A.1809.)

C. Legislation Proposed.

1. Proposed Amendment of N.J.S.A. 54:3-21 to Permit Direct Appeals of Class 4 Properties.

The Committee has frequently discussed the direct appeal jurisdiction of the Tax Court for local property tax cases. Currently, under N.J.S.A. 54:3-21, a tax appeal may be filed directly in the Tax Court only if the assessed value of the property subject to the appeal exceeds $750,000. Property tax assessments of $750,000 or less must first be appealed to one of the twenty-one county tax boards from which a further appeal to the Tax Court may be taken.

Many practitioners experienced in local property tax appeals have maintained that tax appeals involving commercial properties, industrial properties or apartments designed for the use of five families or more (referred to as "class 4 properties" in this Report based upon classifications set forth in N.J.A.C. 18:12-2.2), without regard to the assessed value of the property, often involve complex issues that inevitably reach the Tax Court for review and disposition. County tax boards are often reluctant to tackle the complex and difficult issues presented by commercial tax appeals because of these limitations on time (all appeals must be heard and decided by June 30 of each year) and the fact that the county tax board commissioners only serve part time. Often commercial tax appeals are simply "affirmed without prejudice" thus (a) delaying the time at which the ultimate appeal is filed in the Tax Court and (b) requiring the taxpayer to expend an additional filing fee for a required proceeding with no substantive review. In the more complex cases involving class 4 properties, these practitioners believe that taxpayers should have the option to bypass the county board level and go directly to the Tax Court.

Accordingly, the Committee recommends that N.J.S.A. 54:3-21 be amended in order to expand the direct appeal jurisdiction of the Tax Court to include all class 4 properties without regard to the assessed valuation of those properties. The Committee feels that taxpayers should have the

option to bring a class 4 property tax appeal directly to the Tax Court thereby avoiding the time and expense associated with an appeal to the county tax board. Of course, the taxpayer now has, and will continue to have, the option to first bring the appeal to the county tax board for all class 4 properties.

This legislative recommendation was originally made by the Committee in its Biennial Report for the 1998-99 and 1999-2000 Court Years and was introduced as a bill in the Assembly in the year 2000. The legislation was never acted upon by the Legislature and has not been reintroduced. The text of the recommended amendment follows and is indicated in bold text.

54:3-21. Appeal by taxpayer or taxing district; petition; complaint.

A taxpayer feeling aggrieved by the assessed valuation of the taxpayer's property, or feeling discriminated against by the assessed valuation of other property in the county, or a taxing district which may feel discriminated against by the assessed valuation of property in the taxing district, or by the assessed valuation of property in another taxing district in the county, may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, appeal to the county board of taxation by filing with it a petition of appeal; provided, however, that any such taxpayer or taxing district may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, file a complaint directly with the Tax Court, if the assessed valuation of the property subject to the appeal exceeds $750,000.00 <u>or if the property subject to the appeal is classified as commercial, industrial or apartments designed for the use of five families or more</u>. Within ten days of the completion of the bulk mailing of notification of assessment, the assessor of the taxing district shall file with the county board of taxation a certification setting forth the date on which the bulk mailing was completed. If a county board of taxation completes the bulk mailing of notification of assessment, the tax administrator of the county board of taxation shall within ten days of the completion of the bulk mailing prepare and keep on file a certification setting forth the date on which the bulk mailing was completed. A taxpayer shall have 45 days to file an appeal upon the issuance of a notification of a change in assessment. An appeal to the Tax Court by one party in a case in which the Tax Court has jurisdiction shall establish jurisdiction over the entire matter in the Tax Court. All appeals to the Tax Court hereunder shall be in accordance with the provisions of the State Uniform Tax Procedure Law, <u>R.S</u>. 54:48-1, *et seq*.

If a petition of appeal or a complaint is filed on April 1 or during the 19 days next preceding April 1, a taxpayer or a taxing district shall have 20 days from the date of service of the petition or complaint to file a cross-petition of appeal with a county board of taxation or a counterclaim with the Tax Court, as appropriate.

2. Proposed Amendment of N.J.S.A. 54:3-27 to Authorize Relaxing Tax Payment Requirement.

The Committee believes that the Tax Court's power to relax the tax payment requirement as the interests of justice require should be specifically set forth in N.J.S.A. 54:3-27. It is a legislative recommendation, which was inadvertently omitted from comprehensive legislative recommendations previously made by the Committee and enacted into law in 1999 as chapter 208 of the Laws of 1999. Specifically providing for the power to relax the tax payment requirement in N.J.S.A. 54:3-27 is consistent with the relaxation power added by the amendment of N.J.S.A. 54:51A-1 as part of that same 1999 comprehensive legislation. The text of the recommended amendment follows and is indicated in bold text.

54:3-27. Payment of tax pending appeal

A taxpayer who shall file an appeal from an assessment against him shall pay to the collector of the taxing district no less than the total of all taxes and municipal charges assessed against him for the current tax year in the manner prescribed in R.S. 54:4-66.

A taxpayer who shall file an appeal from an added or omitted assessment shall, in order to maintain an action contesting the added or omitted assessment, pay to the collector of the taxing district all unpaid prior years' taxes and all of the taxes for the current year as said taxes become due and payable, exclusive of the taxes imposed under the added or omitted assessment.

If an appeal involves Class 3B (Farm Qualified) or Classes 15A, B, C, D, E and F (Exempt Property as defined in R.S. 54:4-52) and the subject of the appeal is statutory qualification, the taxpayer shall not be required to meet the payment requirements specified herein.

The collector shall accept such amount, when tendered, give a receipt therefor and credit the taxpayer therewith, and the taxpayer shall have the benefit of the same rate of discount on the amount paid as he would have on the whole amount.

Notwithstanding the foregoing, the county board of taxation or the Tax Court in a matter before the court may relax the tax payment requirement and fix such terms for payment of the tax as the interests of justice may require. If the county board of taxation refuses to relax the tax payment requirement and that decision is appealed, the Tax Court may hear all issues without remand to the county board of taxation as the interests of justice may require.

The payment of part or all of the taxes upon any property, due for the year for which an appeal from an assessment upon such property has been or shall hereafter be taken, or

of taxes for subsequent years, shall in nowise prejudice the status of the appeal or the rights of the appellant to prosecute such appeal, before the county board of taxation, the Tax Court, or in any court to which the judgment arising out of such appeal shall be taken, except as may be provided for in R.S. 54:51A-1.

3. Reorganization and Revision of N.J.S.A. 54:4-3.6 to Clarify Property Exemption Applicable to Nonprofit Organizations.

The Committee believes the organizational structure of N.J.S.A. 54:4-3.6 is confusing and warrants revision. This proposal is intended to revise the existing structure of N.J.S.A. 54:4-3.6 without affecting the meaning, purpose or interpretation of the statute as currently written. Consistent with that approach, the language utilized in the existing statutory framework was retained as much as possible. The text of the recommended revision follows in its entirety.

54:4-3.6 Exemption of property of nonprofit organizations

The following property shall be exempt from taxation under this chapter:

a. 1. All buildings actually used for colleges, schools, academies or seminaries, provided that if any portion of such buildings is leased to profit-making organizations or otherwise used for purposes which are not themselves exempt from taxation, said portion shall be subject to taxation and the remaining portion only shall be exempt.

2. All buildings actually used for historical societies, associations or exhibitions, when owned by the State, county or any political subdivision thereof or when located on land owned by an educational institution which derives its primary support from State revenue.

3. All buildings actually and exclusively used for public libraries.

4. All buildings actually and exclusively used for asylum or schools for feebleminded or idiotic persons and children.

5. All buildings used exclusively by any association or corporation formed for the purpose and actually engaged in the work of preventing cruelty to animals.

6. All buildings actually and exclusively used by volunteer first-aid squads, which squads are or shall be incorporated as associations not for pecuniary profit.

7. (i) All buildings actually used in the work of associations and corporations organized exclusively for the moral and mental improvement of men, women and children provided that if any portion of a building used for that purpose is leased to profit-making organizations or is otherwise used for purposes

which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion only shall be exempt.

(ii) All buildings owned or held by an association or corporation created for the purpose of holding the title to such buildings as are actually and exclusively used in the work of two or more associations or corporations organized exclusively for the moral and mental improvement of men, women and children.

8. (i) All buildings actually used in the work of associations and corporations organized exclusively for religious purposes, including religious worship, or charitable purposes, provided that if any portion of a building used for that purpose is leased to a profit-making organization or is otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion shall be exempt from taxation, and provided further that if any portion of a building is used for a different exempt use by an exempt entity, that portion shall also be exempt from taxation.

(ii) All buildings owned by a corporation created under or otherwise subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and actually and exclusively used in the work of one or more associations or corporations organized exclusively for charitable or religious purposes, which associations or corporations may or may not pay rent for the use of the premises or the portions of the premises used by them.

9. All buildings actually used in the work of associations and corporations organized exclusively for hospital purposes, provided that if any portion of a building used for hospital purposes is leased to profit-making

organizations or otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion only shall be exempt.

As used in this section "hospital purposes" includes health care facilities for the elderly, such as nursing homes; residential health care facilities; assisted living residences; facilities with a Class C license pursuant to P.L. 1979, c. 496 (C.55:13B-1 et al.), the "Rooming and Boarding House Act of 1979"; similar facilities that provide medical, nursing or personal care services to their residents; and that portion of the central administrative or service facility of a continuing care retirement community that is reasonably allocable as a health care facility for the elderly.

10. The buildings, not exceeding two, actually occupied as a parsonage by the officiating clergyman of any religious corporation of this State, together with the accessory buildings located on the same premises.

b. The land whereon any of the buildings mentioned in subsection a. are erected, and which may be necessary for the fair enjoyment thereof, and which is devoted to the purposes above mentioned and to no other purpose and does not exceed five acres in extent.

c. The furniture and personal property in said buildings mentioned in subsection a. if used in and devoted to the purposes therein mentioned.

d. All property owned and used by any nonprofit corporation in connection with its curriculum, work, care, treatment and study of feebleminded, mentally retarded, or idiotic men, women, or children shall also be exempt from taxation, provided that such corporation conducts and maintains research or professional

training facilities for the care and training of feebleminded, mentally retarded, or idiotic men, women or children.

e. Provided, in case of all the foregoing, the buildings, or the lands on which they stand, or the associations, corporations or institutions using and occupying them as aforesaid, are not conducted for profit, except that the exemption of the buildings and lands used for charitable, benevolent or religious purposes shall extend to cases where the charitable, benevolent or religious work therein carried on is supported partly by fees and charges received from or on behalf of beneficiaries using or occupying the buildings; provided the building is wholly controlled by and the entire income therefrom is used for said charitable, benevolent or religious purposes. The foregoing exemption shall apply only where the association, corporation or institution claiming the exemption owns the property in question and is authorized to carry out the purposes on account of which the exemption is claimed or where an educational institution, as provided herein, has leased said property to a historical society or association or to a corporation organized for such purposes and created under or otherwise subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes.

4. Proposed Amendment of N.J.S.A. 54:51A-10 and N.J.S.A. 54:51A-19 to Clarify Tax Court Fees.

Statutory provisions concerning Tax Court fees are set forth in N.J.S.A. 22A:5-1 (L.1993, c.74, §2). Generally, the filing fee for commencement of proceedings in the Tax Court, other than Small Claims Division proceedings, is the same as the fee for proceedings in the Superior Court, Law Division. Additional fees, Small Claims Division fees and other fee matters are to be established by court rules. The fee for filing a complaint in the Tax Court is $200, which is the fee for filing a complaint in the Law Division of the Superior Court. See N.J.S.A. 22A:2-6. It has come to the Committee's attention that, when this statutory fee schedule was adopted in 1993, the Legislature failed to amend or repeal N.J.S.A. 54:51A-10 and N.J.S.A. 54:51A-19 which fixed the fee for filing the first paper in the Tax Court at $75. In all other respects, the provisions of N.J.S.A. 22A:5-1 are the same as N.J.S.A. 54:51A-10 and N.J.S.A. 54:51A-19.

In order to eliminate this statutory conflict and inconsistency, the Committee proposes to amend both N.J.S.A. 54:51A-10 and N.J.S.A. 54:51A-19 to simply cross-reference N.J.S.A. 22A:5-1. Alternatively, N.J.S.A. 54:51A-10 and N.J.S.A. 54:51A-19 can be repealed in their entirety. The text of the recommended amendments follow with new language indicated in bold text and deleted language in brackets.

54:51A-10. Fees

Filing fees in the Tax Court shall be established in accordance with R.S. 22A:5-1. [Upon the filing or entering of the first paper or proceeding in any action or proceeding in the tax court hereunder, the plaintiff or any person filing a counterclaim shall pay to the clerk of the court, for use of the State, $75.00 for the first paper filed by him, which shall cover all fees payable therein, except a lesser fee may be provided by rule of court, and except further that a taxing district shall not be required to pay a filing fee upon the filing of a counterclaim or upon the filing of any responsive pleading. Other or additional fees may be established by rules of court, except where a lesser fee is provided by law or rule of court, that fee shall be paid. The foregoing fees shall not be applicable to any proceeding in the small claims division. The fees in the small claims division shall be established pursuant to rules of court.]

54:51A-19. Fees

Filing fees in the Tax Court shall be established in accordance with R.S. 22A:5-1. [Upon the filing or entering of the first paper or proceeding in any action or proceeding in the tax court hereunder, the plaintiff or any person filing a counterclaim shall pay to the clerk of the court, for use of the State, $75.00 for the first paper filed by him, which shall cover all fees payable therein, except a lesser fee may be provided by rule of court, and except further, that no filing fee shall be required upon the filing of a responsive pleading by a taxing district.**]**

PART V — MATTERS HELD FOR CONSIDERATION

1. Continued review and consideration of the Tax Court DCM Program Rules and their application and administration on an expanded statewide basis.

2. Continued review and consideration of Tax Court computerization, including on-line access to case status and electronic filing.

3. Consideration of ratios more suitable than the currently enforced Director's annual school aid ratio in N.J.S.A. 54:1-35a for determining the measure of discrimination relief pursuant to N.J.S.A. 54:3-22 and N.J.S.A. 54:51A-6 in local property tax appeals.

4. Continued review of small claims jurisdiction, as more specifically described in Part III C of this report.

Respectfully submitted,

Michael A. Guariglia
Chairman

Dated: January 15, 2004

PART VI—MEMBERS OF THE SUPREME COURT COMMITTEE ON THE TAX COURT

Michael A. Guariglia, Esq., Chair
Peter J. Zipp, Esq., Vice Chair

Hon. Joseph C. Small, P.J.T.C.
Hon. Francine I. Axelrad, J.A.D.
Hon. Vito L. Bianco, J.T.C.
Hon. Harold A. Kuskin, J.T.C.
Hon. Michael A. Andrew, Jr., P.J.T.C. (Retired)
Robert J. Alter, Esq.
Michael Barker
Edna Y. Baugh, Esq.
Vincent A. Belluscio
Ramiro M. Carbonell
Raymond Cirz
Kevin J. Coakley, Esq.
Patrick DeAlmeida, DAG
Susan A. Feeney, Esq.
Robert F. Giancaterino, Esq.
Phillip J. Giannuario, Esq.
Jeffrey Gordon, Esq.
Julian F. Gorelli, DAG
Harry Haushalter, Esq.
Margaret A. Holland, DAG
Barry Krauser
Robert Layton
John R. Lloyd, Esq.
Richard B. Nashel, Esq.
Parag P. Patel, Esq.
John M. Pellecchia, Esq.
Richard Polton
John Quick
Joseph G. Ragno, Esq.
Christopher Stracco, Esq.
Steven P. Sukel, Esq.
Robert K. Thompson
Matthew U. Watkins

AOC Staff: Diane L. Ailey
Lynne E. Allsop