

BIENNIAL REPORT OF THE
SUPREME COURT COMMITTEE ON THE TAX COURT
2000-01 and 2001-02 COURT YEARS
SUBMITTED TO THE SUPREME COURT OF NEW JERSEY

January 15, 2002

Table of Contents

	<u>Page</u>
INTRODUCTION.....	1
I. RULE AMENDMENTS RECOMMENDED FOR ADOPTION	2
A. Proposed Amendment to R. 1:9-1—Authority of Tax Court Administrator to Issue Subpoenas	2
B. Proposed Amendment to R. 8:3-1(a)—Reference to Tax Court Administrator	4
C. Proposed Amendment to R. 8:3-4(a)—Reference to Tax Court Administrator	6
D. Proposed Amendment to R. 8:4-1(c)—Homestead Tax Rebate Procedures	8
E. Proposed Amendment to R. 8:5-3(b)(1)—Reference to Tax Court Administrator; Reference to Rebate Cases	10
F. Proposed Amendment to R. 8:6-1—Timing of Discovery.....	12
G. Proposed Amendment to R. 8:6-3—Modification of Caption; Reference to Tax Court Administrator.....	15
II. RULE AMENDMENTS CONSIDERED AND REJECTED	17
A. Proposed Amendment to R.8:7(e) – Motions Pursuant to N.J.S.A. 54:4-34	17
III. OTHER ACTIONS AND RECOMMENDATIONS.....	18
A. Availability of Unpublished Opinions	18
B. Chapter 123 Corridor	19
C. Report on Small Claims Jurisdiction.....	20
IV. LEGISLATION.....	21
A. Legislation Supported	21
1. A.3275—Direct Appeals to Tax Court for Class 4 Properties	22
2. S.2009 – Information Reported on Annual Assessment Notice	22
B. Legislation Opposed	23
1. A.92—Limiting Local Property Tax Appeals	23

2.	A.111 – Limitation on Judiciary.....	24
3.	A.3644—Limitation on Judiciary.....	25
C.	Legislation Proposed.....	26
1.	Proposed Amendment of N.J.S.A. 54:3-21 to Permit Direct Appeals of Class 4 Properties.....	26
2.	Proposed Amendment of N.J.S.A. 54:3-27 to Authorize Relaxing Tax Payment Requirement	30
3.	Reorganization and Revision of N.J.S.A. 54:4-3.6 to Clarify Property Exemption Applicable to Nonprofit Organizations	33
4.	Proposed Amendment of N.J.S.A. 54:51A-10 and N.J.S.A. 54:51A-19 to Clarify Tax Court Fees.....	38
VI.	MATTERS HELD FOR CONSIDERATION.....	40
VII.	MEMBERS OF THE SUPREME COURT COMMITTEE ON THE TAX COURT	41

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 meetings held during the period beginning September 1, 2000 and ending January 9, 2002 were well attended. Numerous topics and issues were covered and discussions were detailed and vigorous.

The Committee did not focus on any one issue, nor was there any large project which dominated the work of the Committee. 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.

In September 2000, the Chairman appointed two standing subcommittees: the Miscellaneous Rules Subcommittee, chaired by Susan A. Feeney, and the Legislation Subcommittee, chaired by Julian F. Gorelli. Other shorter term subcommittees were appointed on an as-needed basis. The bulk of the rule amendments and legislative proposals considered, recommended for adoption or rejected by the Committee were the product of the work of these subcommittees.

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. 1:9-1—Authority of Tax Court Administrator to Issue Subpoenas.

Since the role of the Clerk of the Tax Court has been replaced by the Tax Court Administrator, the Committee proposes to amend R. 1:9-1 to include the Tax Court Administrator as a party authorized to issue subpoenas. The text of the proposed amendment follows.

1:9-1. For Attendance of Witnesses; Forms; Issuance; Notice in Lieu of Subpoena

A subpoena may be issued by the clerk of the court **or, in the case of the Tax Court, the Tax Court Administrator** or by an attorney or party in the name of the clerk **or Administrator** or as provided by R.7:7-8 (subpoenas in certain cases in the municipal court). It shall state the name of the court and the title of the action and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. If the witness is to testify in a criminal action for the State or an indigent defendant, the subpoena shall so note, and shall contain an order to appear without the prepayment of any witness fee. The testimony of a party who could be subpoenaed may be compelled by a notice in lieu of subpoena served upon the party's attorney demanding that the attorney produce the client at trial. If the party is a corporation or other organization, the testimony of any person deposable on its behalf, under R.4:14-2, may be compelled by like notice. The notice shall be served in accordance with R.1:5-2 at least 5 days before trial. The sanctions of R.1:2-4 shall apply to a failure to respond to a notice in lieu of a subpoena.

Note: Source—R.R 3:5-10(a)(b), 4:46-1, 6:3-7(a), 7:4-3 (second paragraph), 8:4-9(a)(b); caption and text amended November 27, 1974 to be effective April 1, 1975; amended July 13, 1994 to be effective September 1, 1994; amended January 5, 1998 to be effective February 1, 1998; **amended**, **2002 to be effective September 1, 2002.**

B. Proposed Amendment to R. 8:3-1—Reference to Tax Court Administrator.

Since the role of the Clerk of the Tax Court has been replaced by the Tax Court Administrator, the Committee proposes to amend R. 8:3-1 to refer to the Tax Court Administrator rather than the Clerk of the Tax Court. The text of the proposed amendment follows.

8:3-1. Commencement of Action

(a) An action is commenced by filing a complaint with **[the Clerk of]** the Tax Court

Administrator.

(b) . . . no change.

Note: Adopted June 20, 1979 to be effective July 1, 1979. Former rule redesignated as paragraph (a) and (b) adopted July 22, 1983 to be effective September 12, 1983; **paragraph (a) amended** , **2002 to be effective September 1, 2002.**

C. Proposed Amendment to R. 8:3-4(a)—Reference to Tax Court Administrator.

Since the role of the Clerk of the Tax Court has been replaced by the Tax Court Administrator, the Committee proposes to amend R. 8:3-4(a) to refer to the Tax Court Administrator rather than the Clerk of the Tax Court. The text of the proposed amendment follows.

8:3-4. Contents of Complaint, Generally

(a) Generally. The complaint shall set forth the claim for relief and a statement of the facts on which the claim is based and shall conform to the requirements of R. 8:3-5. The **[Clerk of the]** Tax Court **Administrator** shall make sample forms available to litigants on request. The wording of any sample form may be modified to conform to the claim made and relief sought in a particular case.

(b) . . . no change.

(c) . . . no change.

(d) . . . no change.

(e) . . . no change.

Note: Adopted June 20, 1979 to be effective July 1, 1979. Paragraphs (a) and (d) amended July 15, 1982 to be effective September 13, 1982; paragraph (e) adopted November 5, 1986 to be effective January 1, 1987; paragraphs (b) and (c) amended July 5, 2000 to be effective September 5, 2000; **paragraph (a) amended _____, 2002 to be effective September 1, 2002.**

D. Proposed Amendment to R. 8:4-1(c)—Homestead Tax Rebate Procedures.

As a result of amendments to N.J.S.A. 54:4-8.66a (L.1999, c.13), there is now a conflict with R. 8:4-1(c) in connection with the time to appeal a denial of a Homestead Rebate claim. The Committee proposes to amend R. 8:4-1(c) to conform to the 90 day appeal period now specified in N.J.S.A. 54:4-8.66a and to refer to appeals relating to NJ SAVER tax rebate claims. The text of the proposed amendment follows.

Rule 8:4-1. Time for Filing Complaint

(a) . . . no change.

(b) . . . no change.

(c) **[Homestead] Tax Rebate Matters**. Complaints seeking **[to]** review **[the denial]** of a **[homestead tax rebate claim by] final determination of** the Director of the Division of Taxation **[or the Director's determination of the amount of] with respect to** a homestead tax rebate **claim or NJ SAVER tax rebate claim**, shall be filed within **[30] 90** days of the **[date of mailing to the claimant of the Director's denial or] issuance of the** determination.

Note: Adopted June 20, 1979 to be effective July 1, 1979. Paragraph (a)(2) amended July 8, 1980 to be effective July 15, 1980; paragraphs (a)(2) and (3) amended July 22, 1983 to be effective September 12, 1983, paragraph (c) adopted July 22, 1983 to be effective September 12, 1983; paragraph (a)(1) amended November 5, 1986 to be effective January 1, 1987; paragraph (c) amended May 6, 1991 to be effective immediately; paragraph (a)(4) amended July 14, 1992 to be effective September 1, 1992; **paragraph (c) amended _____, 2002 to be effective September 1, 2002.**

E. Proposed Amendment to R. 8:5-3(b)(1)—Reference to Tax Court Administrator; Reference to Rebate Cases.

Since the role of the Clerk of the Tax Court has been replaced by the Tax Court Administrator, the Committee proposes to amend R. 8:5-3(b)(1) to refer to the Tax Court Administrator rather than the Clerk of the Tax Court. The Committee also proposes to expand the references to rebate cases to include NJ SAVER rebate claims and to correct the reference to the homestead rebate and NJ SAVER rebate statute. The text of the proposed amendment follows.

8:5-3. On Whom Served

(a) . . . no change.

(b) Review of State Tax Action.

(1) A complaint by a taxpayer to review an action of the Director of the Division of Taxation, any other state agency (including the Director of the Division of Motor Vehicles) with respect to a tax matter, or a county recording officer with respect to the realty transfer tax shall be served as to the former upon the state agency or as to the latter upon the county recording officer. In addition, said complaint shall be served upon the Attorney General of the State of New Jersey, except that no service upon the Attorney General shall be required of a complaint to review the Director's denial of a taxpayer's **[H]homestead or NJ SAVER [R]rebate** application filed pursuant to N.J.S.A. 54:4-~~[3.80]~~ **8.57**, et seq. In **[H]homestead or NJ SAVER [R]rebate** cases the complaint shall be served upon the Attorney General by **[the Clerk of]** the Tax Court **Administrator** as soon as practical after filing of the complaint.

(2) . . . no change.

(3) . . . no change.

(4) . . . no change.

(c) . . . no change.

Note: Adopted June 20, 1979 to be effective July 1, 1979. Paragraph (a)(7) adopted and paragraphs (b)(1) and (2) amended July 8, 1980 to be effective July 15, 1980; paragraphs (a)(1), (2), (3) and (7) amended July 15, 1982 to be effective September 13, 1982; paragraph (a)(5) amended and paragraph (b)(4) adopted July 22, 1983 to be effective September 12, 1983; paragraph (a)(3) amended and paragraph (a)(8) adopted November 7, 1988 to be effective January 2, 1989; paragraph (a) caption and paragraphs (a)(7) and (8) amended and paragraph (c) adopted June 29, 1990 to be effective September 4, 1990; paragraph (a)(5) amended July 14, 1992 to be effective September 1, 1992; paragraph (a)(1) amended July 13, 1994; **paragraph (b)(1) amended** , **2002 to be effective September 1, 2002.**

F. Proposed Amendment to R. 8:6-1—Timing of Discovery.

The Committee proposes to amend R. 8:6-1 to provide specific discovery completion deadlines applicable to the Tax Court because a prior amendment of R. 4:24-1 which was cross-referenced by R. 8:6-1 eliminated reference to specific time periods. The text of the proposed amendment follows.

8:6-1. Discovery; Exchange of Appraisals and Comparable Sales and Rentals

(a) Discovery. Discovery may be taken in accordance with the provisions of R. 4:10-1 through R. 4:18-2 and R. 4:22 through R. 4:25 insofar as applicable except as follows:

(1) **In local property tax cases, discovery shall be completed within 150 days from service of the complaint or as directed in the case management notice or as otherwise directed by the court.**

(2) [(1) in] In actions to review any equalization table, answers to interrogatories shall be served within 20 days from the date of service of the interrogatories[;].

(3) [(2) in] In state tax cases (other than small claims cases) leave of court, granted with or without notice, must be obtained if a party seeks to take a deposition by oral examination prior to the expiration of 60 days after service of the complaint[;].

(4) [(3) in] In state tax cases **discovery shall be completed within 150 days or as directed in the case management notice or as otherwise directed by the court.** [t]The 150 days for the completion of discovery [prescribed by R. 4:24-1] shall commence to run 60 days after the service of the complaint.

(5) [(4)] In local property tax cases assigned to the Small Claims Division under the provisions of R. 8:11, discovery shall be limited to the property record card for the subject premises, inspection of the subject premises, a closing statement if there has been a sale of the subject premises within three years of the assessing date, the cost of improvements within three years of the assessing date, and income, expense and lease information for income-producing property. The court in its discretion may grant additional discovery for good cause show.

(6) [(5)] In local property tax cases, interrogatories and requests for production of documents shall be in the form and manner prescribed by the Tax Court.

(b) . . . no change.

Note: Adopted June 20, 1979 to be effective July 1, 1979. Amended July 8, 1980 to be effective July 15, 1980; paragraph (a) amended July 16, 1981 to be effective September 14, 1981; paragraphs (a) and (b) amended and caption amended July 15, 1982 to be effective September 13, 1982; paragraph (b)(1)(iii) adopted July 22, 1983 to be effective September 12, 1983; paragraph (a)(4) adopted November 5, 1986 to be effective January 1, 1987; paragraph (5) adopted July 13, 1994 to be effective September 1, 1994; paragraphs (b)(1)(i) and (b)(1)(ii) amended July 10, 1998 to be effective September 1, 1998; **paragraph (a) amended _____, 2002 to be effective September 1, 2002.**

G. Proposed Amendment to R. 8:6-3—Modification of Caption; Reference to Tax Court Administrator.

The Committee proposes to change the caption to this rule to be consistent with the new caption of R. 4:23-5. Also, since the role of the Clerk of the Tax Court has been replaced by the Tax Court Administrator, the Committee proposes to amend R. 8:6-3 to refer to the Tax Court Administrator rather than the Clerk of the Tax Court. The text of the proposed amendment follows.

Rule 8:6-3. Failure to [**Serve Answers to Interrogatories**] **Make Discovery**.

The provisions of R. 4:23-5 shall apply to proceedings in the Tax Court except that the delinquent party shall pay the required costs to [**the Clerk**] the Tax Court **Administrator**.

Note: Adopted July 8, 1980 to be effective July 15, 1980; **amended** _____, **2002 to be effective September 1, 2002.**

PART II—RULE AMENDMENTS CONSIDERED AND REJECTED

Amendments to the following rules were considered and rejected by the Committee:

A. Proposed Amendment to R.8:7(e) – Motions Pursuant to N.J.S.A. 54:4-34

A few Committee members questioned whether the time limits specified in R. 8:7(e) for bringing a motion to dismiss due to a property owner's failure to comply with an assessor's request for information under N.J.S.A. 54:4-34, were appropriate. The Committee discussed the time limits adopted in 1998 and felt that they are reasonable and consistent with due process principles and case law. See *Towne Oaks v. South Bound Brook*, 326 N.J. Super. 99 (App. Div. 1999), certif. den. 164 N.J. 188 (2000); *Paulison Ave. Assoc. v. Passaic City*, 18 N.J. Tax 101 (Tax Ct. 1999).

PART III — OTHER ACTIONS AND RECOMMENDATIONS

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

A. 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.

B. Chapter 123 Corridor.

The average ratio and “Chapter 123 corridor” are the basis for providing discrimination relief pursuant to N.J.S.A. 54:3-22 and N.J.S.A. 54:51A-6 in local property tax appeals. The Committee voted to recommend to the Director of the Division of Taxation that the sales ratio study upon which the average ratio is based be improved or updated to include more modern statistical methods, with reference to the Standard on Ratio Studies developed by the International Association of Assessing Officers (IAAO). In addition, once the calculation of the average ratio is improved or updated, consideration should be given by the Legislature to narrow or eliminate the Chapter 123 corridor which is developed around the average ratio.

C. Report on 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'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 Biannual Report pages 3-5, 10-17.

Upon adoption of the 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 Committee has reviewed the report of the Presiding Judge and the Tax Court Administrator dated January 8, 2002 (the "Report"). Although the reliability of conclusions based on two years' statistical evidence is limited, nothing in the Report or its accompanying statistical tables gives any indication that the adoption of the new small claims jurisdiction rules was improvident, has cut off access to the Tax Court for any class of taxpayers, or has resulted in significant increase of appeals of residential assessments when a greater than \$2,000 tax change was sought.

Accordingly, the Committee concludes that the Supreme Court's adoption of the small claims rules amendments in 2000 appear to have had their intended effect and, at this time, sees no need to further modify the small claims jurisdiction of the Tax Court.

PART IV — LEGISLATION

A. Legislation Supported.

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

1. A.3275—Direct Appeals to the Tax Court for Class 4 Properties.

This bill proposes 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. This legislative amendment was recommended by the Committee in its Biennial Report to the Supreme Court for the 1998-99 and 1999-2000 Court Years.

2. S.2009 – Information Report on Annual Assessment Notice.

This bill proposes to change the information that is required to be reported on the annual assessment notice sent to all taxpayers by an assessor. It would require the preceding year's assessment to be reported on the notice in addition to the current assessment. The Committee believes this information will better inform taxpayers regarding the tax assessments affecting their properties and assist in determining whether an appeal of the new assessment is appropriate.

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.92—Limiting Local Property Tax Appeals.

This bill proposes 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.111—Limitation on Judiciary.

This bill proposes 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.

3. A.3644—Limitation on Judiciary.

This bill proposes 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.111 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.

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. If the assessed value of the property falls below \$750,001, the taxpayer must first bring an appeal to the county board of taxation.

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. 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. In addition, the Committee feels this legislative recommendation complements the amendments to R. 8:3-4(b) and (c), R. 8:11 and R. 8:12(b) and (c)(2) concerning the small claims jurisdiction of the Tax Court recommended by the Committee in its Biennial Report for the 1998-99

and 1999-2000 Court Years and adopted by the Supreme Court on July 5, 2000 (effective September 1, 2000).

This legislative recommendation was made by the Committee in its Biennial Report for the 1998-99 and 1999-2000 Court Years and was introduced in the Assembly as Assembly Bill No. 3275. The legislation was not acted upon by the Legislature. 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 **or if the property subject to the appeal is classified as commercial, industrial or apartments designed for the use of five families or more.** 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, R.S. 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 Law 1999, chapter 208. 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 and purpose of the statute as currently written. All statutory inferences incorporated in the present legislation are intended to be preserved and thus continue in this revision. 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 feeble-minded, 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 feeble-minded, 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, are the same as 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 \$175, 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 Tax Court computerization, including on-line access to case status and electronic filing.
2. Consideration of what additional notices, or revisions to the existing annual assessment notice are warranted to better inform taxpayers of changes to their property's assessment and all applicable appeal rights.
3. Consideration of alternative calculations and data to improve the reliability of the average ratios and Chapter 123 corridor, which provide for discrimination relief pursuant to N.J.S.A. 54:3-22 and N.J.S.A. 54:51A-6 in local property tax appeals. This matter is beyond the approved recommendation set forth on page 19 of this Report.
4. Continued review of small claims jurisdiction. In particular, the Committee will continue to monitor and scrutinize filing data in the small claims and regular divisions of the Tax Court to determine if the 2000 changes to small claims jurisdiction continue to achieve their intended purpose.

Respectfully submitted,

Michael A. Guariglia
Chairman

Dated: January 15, 2002

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

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

Hon. Michael A. Andrew, Jr., P.J.T.C. (Retired)

Hon. Francine I. Axelrad, J.A.D.

Michael Barker

Frank Bucino

Paul T. Chan, Esq.

Kevin J. Coakley, Esq.

Anthony Crecco

Seth I. Davenport, Esq.

Patrick DeAlmeida, DAG

Susan A. Feeney, Esq.

Robert F. Giancaterino, Esq.

Jeffrey Gordon, Esq.

Julian F. Gorelli, DAG

Alyce C. Halchak, Esq.

Harry Haushalter, Esq.

Steven R. Irwin, Esq.

Hon. Roger M. Kahn, J.T.C.

Hon. Harold A. Kuskin, J.T.C.

John O. Lasser

Arthur A. Linfante

Gail L. Menyuk, DAG

John M. Pellicchia, Esq.

Marc H. Pfeiffer

Richard L. Plotkin, Esq.

Joseph E. Rauch

Robert H. Scrivens

Debra M. Simon, CPA

Hon. Joseph C. Small, P.J.T.C.

Robert K. Thompson

Nathan P. Wolf, Esq.

AOC Staff: Doris A. DeBiasi
Lynne E. Allsop