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June 1, 2016

VIA HAND-DELIVERY



The Honorable Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts  
Rules Hearing  
R.J. Hughes Justice Complex  
25 Market Street-P.O. Box 37  
Trenton, New Jersey 08625-0037

Re: Supreme Court Committee on the Tax Court  
Comments to Proposed Rule Regarding  
Stipulations in State Tax Cases

Dear Judge Grant:

We respectfully submit the following comments regarding the Court Rule proposal regarding stipulations in State Tax Court cases ("Proposed Rule") being considered by the Supreme Court of New Jersey, as recommended by the 2014-2016 Supreme Court Committee on the Tax Court ("Committee"). The Committee approved the Proposed Rule by a vote of 11-9.

The stated purpose of the Proposed Rule is to encourage stipulations with respect to:

- (1) the authenticity of copies of any and all tax returns previously submitted to the Division of Taxation that one or more parties contend that are relevant to the determination of the action;
- (2) the authenticity of copies of any and all documents prepared by the Division of Taxation that are contained in the files maintained by the Division with respect to the matter at issue; and

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- (3) the authenticity of copies of any and all documents produced by the Division of Taxation.

While providing these comments, we respectfully note that we do not support adoption of this Proposed Rule as drafted. We are not opposed to stipulations of facts that are not in material dispute and agree that such stipulations are utilized in Tax Court cases where appropriate. However, the Proposed Rule is one-sided because it focuses only on documents submitted to, prepared by, or produced by the Division of Taxation ("Division"). Documents in possession of an opposing party (or parties) are not addressed by the Proposed Rule. As such, the Proposed Rule does not consider the practice and procedure of de novo State Tax Court cases and is unduly compulsory and one-sided. In addition, the Proposed Rule is internally inconsistent as it requires parties to stipulate to the matters noted above that are not the subject of material dispute, but provides for an objection by a party if such party disagrees with the stipulated matter.

We further note that the Proposed Rule is suggested solely for State tax cases. Many facts and documents can be stipulated in local property tax cases (property size, location, address, ownership, etc.). Ideally, the Proposed Rule should be revised to address all of the Tax Court's cases.

Requiring stipulations per the Proposed Rule likely will also create a need for the Tax Court to resolve objections and disputes over such required stipulations. The Proposed Rule as drafted thus raises the concern that significant time would be syphoned from allowing parties to negotiate potential pre-trial settlements of cases or to prepare fully for trial.

In addition, taxpayers are not required to certify to letters and other documents, if produced to the Division during audit, investigation or administrative conference. As a result and as noted above, New Jersey's statutes, cases, and Court Rules require plaintiff taxpayers to bear the initial burden of proof in our de novo State Tax cases. Now requiring the Division to stipulate to the authenticity of uncertified documents would be unfair and unduly prejudicial to one side (defendant Division) in State Tax cases. Similarly, the Proposed Rule should not require parties to stipulate to the authenticity of a document simply because it was produced in discovery. The New Jersey Rules of Evidence address the process of authentication and admission of documents at trial. See, generally, N.J.R.E. 901. The proponents of the Proposed Rule

offer no discussion as to whether or how the Proposed Rule should be harmonized with existing law and procedures regarding trial practice.

Moreover, the Proposed Rule is internally inconsistent because it permits an "objection" in a stipulation (Proposed Rule at (d)). As such, the asserted fact at issue would not be "stipulated" or otherwise agreed to between the parties. In addition, allowing "objections" to stipulated facts, within an asserted stipulation, undermines the Proposed Rule's purported purpose - to streamline State Tax practice.

For the foregoing reasons, we respectfully request that the Proposed Rule, as currently drafted, be rejected by the Supreme Court. Thank you for your consideration of this matter.

Respectfully submitted,

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By:

  
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