

**BIENNIAL REPORT OF THE
SUPREME COURT COMMITTEE ON THE TAX COURT OF NEW JERSEY
2010-2011 AND 2011-2012 COURT YEARS
SUBMITTED TO THE SUPREME COURT OF NEW JERSEY**

January 30, 2012

The Supreme Court Committee on the Tax Court (the “Committee”) is comprised of members of the bench, tax bar (both public and private), local, county and state tax administrators, and others concerned with the administration and review of the New Jersey tax laws. The Committee held four meetings beginning on March 2, 2011 and ending on January 10, 2012. The Chairman appointed five subcommittees: the Gloucester County Pilot Program/Demonstration Pilot Program Subcommittee, the Unpublished Opinions Subcommittee, the Uniform Pretrial Procedures/Pretrial Memorandum in State Tax Cases Subcommittee, the Mandatory Settlement Conference/Alternative Dispute Resolution Subcommittee, and the Legislation Subcommittee.¹

The Gloucester County Pilot Program/Demonstration Pilot Program Subcommittee was charged with considering rule changes necessary to facilitate the recently enacted pilot program establishing county-based assessment of real property in Gloucester County. See Property Tax Assessment Reform Act, N.J.S.A. 54:1-86, et seq., The Committee adopts the subcommittee recommendation to change the court rules to: (1) make clear that under the pilot program Gloucester County constitutes a taxing district within the meaning of the court rules; (2) make the rules on service of complaints in the Tax Court uniform with respect to references to taxing districts; and (3) implement the statutory requirement that the County Assessor in the pilot county inform the relevant municipality prior to entering into a final settlement agreement of a local property tax

¹ The Chairman named a subcommittee on e-filing to consider rule changes necessary once e-filing has been implemented at the Tax Court. Because the Tax Court e-filing project has not progressed to the stage at which rule changes can be considered with any degree of precision, the subcommittee was not activated. Both the subcommittee and the full Committee stand ready to assist with the implementation of e-filing at the Tax Court once implementation of the e-filing system has further advanced.

appeal. To accomplish these objectives, the Committee recommends amending R. 8:5-3, R. 8:5-4 and R. 8:9-5 and adding a new R. 8:13. These are the only rule changes recommended by the Committee.²

Additionally, the subcommittee was charged with monitoring the progress of proposed legislation establishing a demonstration pilot program for the county-based assessment of real property in Monmouth County and other locations and considering any rule changes needed should the demonstration pilot program be enacted. The legislation for the proposed demonstration pilot program was not enacted, but is likely to be considered by the newly constituted Legislature.

The Unpublished Opinions Subcommittee was charged with considering whether and under what circumstances the Tax Court should make available its unpublished opinions at or around the time that the opinions are issued to the parties. The subcommittee recommended that the Tax Court's unpublished opinions be posted on the Judiciary's website for a short period after issuance to the parties. The subcommittee was of the view that website posting of unpublished opinions would facilitate public awareness of the court's operations, promote the goals of the Albin Committee with respect to public access to court records, and assist the tax bar and self-represented parties in following the court's decisions. The subcommittee did not recommend a change to the rules with respect to the nonprecedential nature of unpublished opinions.

Because no rule change was necessary to implement the subcommittee's recommendation, the Committee voted to send its recommendation directly to the Judges

² The Committee also recommends a technical change to R. 8:5-3(a)(7) to reflect a statutory change in the Tax Court's jurisdictional limit, which became effective in 2009, but which apparently was overlooked in the prior Committee cycle.

of the Tax Court. The court voted to implement the Committee's recommendation and implemented the change in procedure on October 31, 2011. The court used existing resources at the Tax Court and the Administrative Office of the Courts to implement the website postings with a minimal expenditure of resources.

The Uniform Pretrial Procedures/Pretrial Memorandum in State Cases Subcommittee was charged with considering implementation of uniform pretrial procedures, including a uniform pretrial memorandum, in state tax cases. The subcommittee considered changes to the standard pretrial memorandum for state tax appeals as well as rule changes to encourage parties to reach stipulations and not unreasonably refuse to stipulate to facts where appropriate. The subcommittee also considered recommending rules to shift the burden of proof on penalty issues and on issues not raised in the Answer in state tax appeals. The subcommittee did not reach a consensus on proposed rule changes, but did recommend changes to the standard pretrial memorandum for state tax cases. The Committee adopted the subcommittee's recommendation. Because no rule changes were necessary to implement this recommendation, the proposed revised pretrial memorandum was forward to the Judges of the Tax Court who agreed to use the proposed uniform pretrial memorandum.

The Mandatory Settlement Conference/Alternative Dispute Resolution Subcommittee was charged with examining alternatives to the existing mandatory settlement conference procedures in local property tax cases. In addition, the subcommittee was charged with exploring alternative dispute resolution mechanisms for Tax Court cases. After extensive consideration of the court's current procedures, the subcommittee determined that the existing system, in which the parties are required to

hold a mandatory settlement conference in which evidence of value is exchanged, although imperfect, provides the best available option for the early resolution of local property tax appeals. The most cumbersome component of the existing procedure, the filing of a mandatory settlement conference report, may be ameliorated through the expected implementation of electronic filing and enhanced case management systems at the Tax Court.

Additionally, the subcommittee concluded that alternative dispute resolution of local property tax appeals is not viable. The universe of appraisal experts and experienced tax attorneys in New Jersey, the pool from which mediators for alternative dispute resolution would be drawn, is limited. Those experts and attorneys are heavily engaged in the representation of parties before the Tax Court, both on behalf of taxpayers and taxing districts. The potential for conflicts of interest is too great to make an alternative dispute resolution program effective. The Committee notes that appeals of assessments below \$1,000,000 must first be brought to the county boards of taxation, where numerous matters are resolved either through settlement or adjudication without the expenditure of judicial resources. The county boards therefore function as fora for the resolution of disputes with the expenditure of limited resources by the parties.

The Legislation Subcommittee monitored bills which, if enacted, would affect practice in the Tax Court and require rule changes. Although the subcommittee tracked a large amount of proposed legislation, no statutes were enacted that required a change to the Tax Court rules. In keeping with its limited charge from the Supreme Court, the Committee restricted its activity to monitoring bills with the potential to require rules

changes. The Committee referred recommendations for legislation changing substantive provisions of New Jersey tax laws to the Tax Section of the State Bar Association.

RULE AMENDMENTS RECOMMENDED FOR ADOPTION

In accordance with the Property Tax Assessment Reform Act, N.J.S.A. 54:1-86, et seq., the attached proposed rule revisions make clear that the Pilot County, Gloucester County, constitutes a taxing district within the meaning of local property tax statutes, and that the County Assessor, an office created to implement the pilot program, shall inform the taxing district in which the property is located prior to entering into a final settlement agreement of an appeal of a local property tax assessment. In addition, the Committee recommends an amendment to R. 8:5-3 to reflect the increase in the jurisdictional limit for direct appeals to the Tax Court from \$750,000 to \$1,000,000, which became effective in 2009. While other rules were amended to reflect the change, it appears that R. 8:5-3 was overlooked at that time.

The recommendation, which includes the amendment of three rules and the addition of a new rule, follows:

R. 8:5-3. On Whom Served

(a) Review of Action of a County Board of Taxation or Direct Review by the Tax Court.

(1) (no change)

(2) (no change)

(3) (no change)

(4) (no change)

(5) A complaint to correct an error in an assessment pursuant to N.J.S.A. 54:51A-7 shall be served as follows:

(i) If by a property owner, upon the County Board of Taxation and the Clerk of the taxing district;

(ii) If by a ~~municipality~~ taxing district, upon the County Board of Taxation and the property owner;

(iii) (no change)

(6) (no change)

(7) A complaint for direct review of an assessment ~~that exceeds \$750,000~~ pursuant to the provisions of N.J.S.A. 54:3-21, 54:4-63.11, 54:4-63.28, or 54:4-63.39 shall be served on the County Board of Taxation and on the assessor and the Clerk of the taxing district in which the property is located, unless the complaint is by a taxing district, in which case the Clerk of the taxing district need not be served.

(8) (no change)

(no change to remainder of rule)

R. 8:5-4. Mode of Service of Complaint

Service shall be made personally or by certified or registered mail, return receipt requested, as provided in R. 4:4-4 with the following exceptions:

- (1) (no change)
- (2) (no change)
- (3) Service upon a taxpayer in a local property tax matter shall be:
 - (i) (no change)
 - (ii) If there was no attorney for the taxpayer in the County Board of Taxation proceeding which resulted in the judgment contested in the complaint or if the complaint is a direct appeal by a ~~municipality~~ taxing district pursuant to N.J.S.A. 54:3-21, service shall be made upon the taxpayer by personal service or by certified or registered mail, return receipt requested, and if by mail, at the address listed on the County Board of Taxation petition by the taxpayer, or if none, at the last known address as it appears on the last ~~municipal~~ taxing district tax duplicate.
 - (iii) (no change)
 - (iv) (no change)
 - (v) (no change)
- (4) (no change)
- (5) (no change)
- (6) (no change)

R. 8:9-5. Judgment Pursuant to Stipulation

(a) Judgment in a local property tax matter may be entered upon stipulation of the parties supported by such proof as the Court may require.

(b) In a county subject to the provisions of the Property Tax Assessment Reform Act, N.J.S.A. 54:1-86, et seq., if the county assessor seeks to settle a property tax appeal filed pursuant to R.S. 54:3-21, the county assessor shall inform the municipality in which the property that is the subject of the appeal is located prior to entering into any final settlement agreement.

R. 8:13. Pilot County as Taxing District

In a municipality subject to the provisions of the Property Tax Assessment Reform Act N.J.S.A. 54:1-86 et seq., the county in which the property is located shall constitute a taxing district for purposes of these rules.

Respectfully submitted,

A handwritten signature in black ink, reading "Patrick DeAlmeida". The signature is written in a cursive style with a large initial "P".

Hon. Patrick DeAlmeida, P.J.T.C.

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