

**BIENNIAL REPORT OF THE
SUPREME COURT COMMITTEE ON THE TAX COURT OF NEW JERSEY
2012-2013 AND 2013-2014 COURT YEARS
SUBMITTED TO THE SUPREME COURT OF NEW JERSEY**

January 31, 2014

The Supreme Court Committee on the Tax Court of New Jersey (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 New Jersey tax laws. The Committee held four meetings beginning on December 12, 2012 and ending on December 3, 2013. The Chairman appointed five subcommittees: the Amended Pleadings/Relation-Back Subcommittee; the Gloucester County Pilot Program/Demonstration Pilot Program Subcommittee; the State Tax Practice Subcommittee; the Super Storm Sandy Subcommittee; and the Legislation Subcommittee.¹

The Amended Pleadings/Relation-Back Subcommittee was charged with considering the Supreme Court’s invitation in Prime Accounting Dep’t v. Township of Carney’s Point, 212 N.J. 493, 517 (2013), “to consider whether a specific rule applying the relation-back doctrine in the setting of tax appeals would address considerations unique to this specialized litigation.” The Committee adopted the Subcommittee recommendation to amend R. 8:3-8 to add language to ensure that amended pleadings in local property tax cases relate back to original pleadings only if no party is significantly prejudiced by the amendment. This was the only rule amendment proposed by the Subcommittee.

The Gloucester County Pilot Program/Demonstration Pilot Program Subcommittee was charged with considering rule changes necessary to facilitate the pilot

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 when necessary.

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., and the Real Property Assessment Demonstration Program authorized by L. 2013, c. 15, now in place in Monmouth County. The Subcommittee determined that no rule changes are necessary to implement these programs, as rules were amended during the prior cycle to accommodate the Gloucester County pilot program and the newly enacted Demonstration Program does not require any Tax Court rule changes.

The State Tax Practice Subcommittee was charged with considering changes to the procedures applicable to State Tax practice. Two proposed rules changes offered by the Subcommittee were adopted by the Committee. One clarifies pleading requirements and the other extends the standard discovery deadline, clarifies the Tax Court's authority to set discovery deadlines, and requires that requests for admission be served as a separate document and not be combined with other types of discovery requests.

Several members of the State Tax Practice Subcommittee proposed rule changes on their own behalves, and not on behalf of the Subcommittee. These proposals included requiring parties to stipulate to all matters to which complete or qualified agreement could or fairly should be reached. The proposal was based on rules in place at the United States Tax Court. In addition, several members of the Subcommittee proposed rules limiting the number of Interrogatories in State Tax cases and establishing standard State Tax practice Interrogatories. The Tax Section of the New Jersey State Bar Association endorsed both proposals. The full Committee also considered the proposals, which did not garner support of a majority of the full Committee, although several members of the full Committee voted in favor of the proposals.

The Super Storm Sandy Subcommittee recommended an amendment to R. 8:6-1(a)(4) to include in standard discovery in local property tax matters assigned to the Small Claims Track information relating to a claim of damage between October 1st of the pretax year and January 1st of the tax year pursuant to N.J.S.A. 54:4-35.1. That statute allows an assessor to consider post-valuation-date damages to buildings or other structures in limited circumstances, such as fire, storm, cyclone, tornado, earthquake or other casualty. Although the statute is long-standing, its impact was highlighted by the extensive property damage caused by Super Storm Sandy after the October 1, 2012 valuation date for tax year 2013, but prior to the start of the 2013 tax year. The Committee agreed that Small Claims Track discovery, which is limited by R. 8:6-1(a)(4), should be expanded to include information related to a claim of structural damage under N.J.S.A. 54:4-35.1.

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 did not consider proposed legislative changes.

RULE AMENDMENTS RECOMMENDED FOR ADOPTION

In Prime Accounting Dep't v. Township of Carney's Point, 212 N.J. 493 (2013), the Supreme Court held that the Tax Court could permit amendment to a local property tax Complaint to allow for the substitution of an aggrieved taxpayer for a named plaintiff with no interest in the property that is the subject of the Complaint. The Court allowed such amendment in Prime Accounting to relate back to the filing date of the original pleading because the original Complaint was timely filed, clearly identified the action as a tax appeal, accurately described the property at issue, and put the taxing district and the public on notice that the assessment for that property was disputed. Id. at 515. At the conclusion of its opinion, the Court “invite[d] the Supreme Court Committee on the Tax Court to consider whether a specific rule applying the relation-back doctrine in the setting of tax appeals would address considerations unique to this specialized litigation.” Id. at 517.

The Prime Accounting Subcommittee considered several approaches to amending R. 8:3-8, the existing rule addressing Amended and Supplemental Pleadings. Ultimately, the Subcommittee and the full Committee determined that a simple approach would best serve Tax Court practice. The proposed rule change thus recognizes that amended pleadings in local property tax cases in the Tax Court relate back to the original pleading provided that no party is significantly prejudiced by the amendment. In addition, the proposed rule change states that to the extent R. 8:3-8 conflicts with R. 4:9-3, the generally applicable relation-back rule, R. 8:3-8 controls.

The recommended amendments follow:

R. 8:3-8. Amended and Supplemental Pleadings

(a) (no change)

(b) (no change)

(c) Relation Back

(1) Local Property Tax: Amendments to pleadings in local property tax cases relate back to the date of the original pleading provided that no party is significantly prejudiced by said amendment.

(2) To the extent that R. 8:3-8 and R. 4:9-3 are not consistent, R. 8:3-8 governs.

~~(c)~~ (d) (no change)

The State Tax Practice Subcommittee considered several proposed changes to rules concerning discovery in State Tax matters. The full Committee adopted two recommendations on this subject. The proposed amendments extend the standard discovery deadline in State Tax cases by an additional 30 days and start the discovery period upon the filing of the Answer, as opposed to 60 days after service of the Complaint. In addition, a proposed amendment requires requests for admission to be served in a separate document and not to be combined with other discovery requests. The full Committee agreed that the latter proposed amendment is warranted because of the consequences of failing to respond to requests for admission, which can sometimes be obscured in a package of various forms of discovery requests with longer periods for responses than are applicable to requests for admission.

The full Committee also adopted the Subcommittee proposal that Complaints in State Tax matters conform to R. 4:5-7, the generally applicable pleading rule, and state allegations in separately numbered paragraphs and allegations and claims for relief in terms that are simple, concise and direct.

The recommended amendments follow:

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

(a) (no change)

(1) (no change)

(2) In state tax cases the ~~150~~ 180 days for the completion of discovery ~~prescribed by R. 4:24-1~~ shall commence to run ~~60 days after the service of the complaint~~ on the date the answer is served. At any time the court, in its discretion or by agreement between the parties, may extend or reopen the time to complete discovery. Completion of discovery shall be coordinated with pretrial conferences and memoranda. Requests for admission shall be served in a separate document so titled and shall not be combined with interrogatories, document production requests, or any other material.

(no change to remainder of rule)

R. 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 and R. 4:5-7. The Clerk of the Tax Court 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.

(1) State Tax Complaints. Complaints filed in State Tax cases shall set forth clear and concise allegations in separately numbered paragraphs. Each allegation shall be stated in simple, concise and direct terms.

(b) Claim for Relief. A pleading which sets forth a claim for relief shall briefly state the factual basis of the claim and the relief sought. Each claim for relief shall be set forth in simple, concise and direct terms. Relief in the alternative may be demanded. A request may be made for a change in real property tax assessment without specifying the amount of such change. A claim for exemption shall be specifically pleaded.

(no change to remainder of rule)

Under New Jersey law, the assessed value of real property is determined each year as its true market value on October 1st preceding the tax year. N.J.S.A. 54:4-23. Changes to the property that affect its value after October 1st are generally not reflected in the assessed value for the tax year starting the following January 1st. N.J.S.A. 54:4-35.1 creates an exception to this general rule. According to the statute,

[w]hen any parcel of real property contains any building or other structure which has been destroyed, consumed by fire, demolished, or altered in such a way that its value has materially depreciated, either intentionally or by the action of storm, fire, cyclone, tornado, or earthquake, or other casualty, which depreciation of value occurred after October first in any year and before January first of the following year, the assessor shall, upon notice thereof being given to him by the property owner prior to January tenth of said year, and after examination and inquiry, determine the value of such parcel of real property as of said January first, and assess the same according to such value.

This statute, which was enacted in 1945, received heightened attention just prior to the start of the 2013 tax year. Super Storm Sandy came ashore in New Jersey on October 29, 2012, shortly after the October 1, 2012 valuation date for tax year 2013. The storm caused extensive damage to buildings and other structures, materially depreciating the value of real property. Although tax assessors throughout the State acted pursuant to N.J.S.A. 54:4-35.1 to assess real property for tax year 2013 in light of any material depreciation caused by the storm, valuation issues arising from the aftermath of the storm are pending in the Tax Court. Those issues are present in local property tax matters assigned to the Small Claims Track, where discovery is limited by R. 8:6-1(a)(4). The Committee proposes to expand Small Claims Track discovery to include information related to damages underlying a claim for relief under N.J.S.A. 54:4-35.1.

The recommended amendments follow:

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

(a) (no change)

(1) (no change)

(2) (no change)

(3) (no change)

(4) In local property tax cases assigned to the Small Claims Track 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 (3) years of the assessing date, the costs of improvements within three (3) years of the assessing date, ~~and~~ income, expense and lease information for income-producing property and information relating to a claim of damage to the property occurring between October 1 of the pretax year and January 1 of the tax year pursuant to N.J.S.A. 54:4-35.1. The court in its discretion may grant additional discovery for good cause shown.

(no change to remainder of rule)

RULE AMENDMENTS NOT RECOMMENDED FOR ADOPTION

As noted above, several members of the State Tax Practice Subcommittee proposed rule changes, not on behalf of the Subcommittee, concerning mandatory stipulations and discovery in State Tax cases. The full Committee considered those amendments. Although both amendments garnered the support of a considerable number of members of the full Committee, neither proposal achieved majority support. For the sake of presenting the Court with a full record of the Committee's deliberations, the proposals, along with written comments in support and in opposition to the proposals, are included in the Appendix to this report.

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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APPENDIX

RULES PROPOSALS OF INDIVIDUAL COMMITTEE MEMBERS NOT ADOPTED BY THE COMMITTEE

RULE PROPOSAL – STIPULATIONS

(a) **Stipulations Required:** (1) *General:* The parties are required to stipulate, to the fullest extent to which complete or qualified agreement can or fairly should be reached, all matters not privileged which are relevant to the pending case, regardless of whether such matters involve fact or opinion or the application of law to fact. Included in matters required to be stipulated are all facts, all documents and papers or contents or aspects thereof, and all evidence which fairly should not be in dispute. Where the truth or authenticity of facts or evidence claimed to be relevant by one party is not disputed, an objection on the ground of materiality or relevance may be noted by any other party but is not to be regarded as just cause for refusal to stipulate. The requirement of stipulation applies under this Rule without regard to where the burden of proof may lie with respect to the matters involved. Documents or papers or other exhibits annexed to or filed with the stipulation shall be considered to be part of the stipulation.

(2) *Stipulations to Be Comprehensive:* The fact that any matter may have been obtained through discovery or requests for admission or through any other authorized procedure is not grounds for omitting such matter from the stipulation. Such other procedures should be regarded as aids to stipulation, and matter obtained through them which is within the scope of subparagraph (1), must be set forth comprehensively in the stipulation, in logical order in the context of all other provisions of the stipulation.

(b) **Form:** Stipulations required under this Rule shall be in writing, signed by the parties thereto or by their counsel. The stipulation shall be clear and concise. Separate items shall be stated in separate paragraphs, and shall be appropriately lettered or numbered. Exhibits attached to a stipulation shall be numbered serially, i.e., 1, 2, 3, etc. The exhibit number shall be followed by "P" if offered by the Plaintiff, e.g., 1-P, "D" if offered by the Defendant, e.g., 2-D, or "J" if joint, e.g., 3-J.

(c) **Filing:** The original and two copies of executed stipulations prepared pursuant to this Rule, each with related exhibits, shall be filed by the parties at or before commencement of the trial of the case, unless the Court in the particular case shall otherwise specify. A stipulation when filed need not be offered formally to be considered in evidence.

(d) **Objections:** Any objection to all or any part of a stipulation should be noted in the stipulation, but the Court will consider any objection to a stipulated matter made at the commencement of the trial or for good cause shown made during the trial.

(e) **Binding Effect:** A stipulation shall be treated, to the extent of its terms, as a conclusive admission by the parties to the stipulation, unless otherwise permitted by the Court or agreed upon by those parties. The Court will not permit a party to a stipulation to qualify, change, or contradict a stipulation in whole or in part, except that it may do so where justice requires. A stipulation and the admissions therein shall be binding and have effect only in the pending case and not for any other purpose, and cannot be used against any of the parties thereto in any other case or proceeding.

(f) **Noncompliance by a Party:** (1) *Motion to Compel Stipulation:* If, after the date of issuance of trial notice in a case, a party has refused or failed to confer with an adversary with respect to entering into a stipulation in accordance with this Rule, or a party has refused or failed to make such a stipulation of any matter within the terms of this Rule, the party proposing to stipulate may file a motion with the Court under R. 1:6 for an order directing the delinquent party to show cause why the matters covered in the motion should not be deemed admitted for the purposes of the case. The motion shall (A) show with particularity and by separately numbered paragraphs each matter which is claimed for stipulation; (B) set forth in express language the specific stipulation which the moving party proposes with respect to each such matter and annex thereto or make available to the Court and the other parties each document or other paper as to which the moving party desires a stipulation; (C) set forth the sources, reasons, and basis for claiming, with respect to each such matter, that it should be stipulated; (D) show that opposing counsel or the other parties have had reasonable access to those sources or basis for stipulation and have been informed of the reasons for stipulation; and (E) show proof of service of a copy of the motion on opposing counsel or the other parties.

(2) *Procedure:* In accordance with R. 1:6, the party to whom the motion is directed shall file a response with the Court, with proof of service of a copy thereof on opposing counsel or the other parties, showing why the matters set forth in the motion papers should not be deemed stipulated for purposes of the pending case. The response shall list each matter involved on which there is no dispute, referring specifically to the numbered paragraphs in the motion to which the admissions relate. Where a matter is disputed only in part, the response shall show the part admitted and the part disputed. Where the responding party is willing to stipulate in whole or in part with respect to any matter in the motion by varying or qualifying a matter in the proposed stipulation, the response shall set forth the variance or qualification and the admission which the responding party is willing to make. Where the response claims that there is a dispute as to any matter in part or in whole, or where the response presents a variance or qualification with respect to any matter in the motion, the response shall show the sources, reasons, and basis on which the responding party relies for that purpose. The Court, where it is found appropriate, may set the motion for a hearing or conference at such time as the Court shall determine.

(3) *Failure of Response:* If no response is filed within the period specified with respect to any matter or portion thereof, or if the response is evasive or not fairly directed to the proposed stipulation or portion thereof, that matter or portion

thereof will be deemed stipulated for purposes of the pending case, and an order issued accordingly.

(4) *Matters Considered*: Opposing claims of evidence will not be weighed under this Rule unless such evidence is patently incredible. Nor will a genuinely controverted or doubtful issue of fact be determined in advance of trial. The Court will determine whether a genuine dispute exists, or whether in the interests of justice a matter ought not be deemed stipulated.

COMMENTS IN SUPPORT OF RULE PROPOSAL: STIPULATIONS

This rule proposal is based nearly verbatim on United States Tax Court Rule 91, *Stipulations For Trial*.

We believe and contend that this rule might reduce the workload of the Tax Court by creating a practice in which counsel for the parties are more strongly encouraged to reach stipulations on facts “to which complete or qualified agreement can or fairly should be reached.” Currently, the Tax Court is effectively required to oversee the development of much of the factual record of state tax cases.

The reasons that support United States Tax Court Rule 91 are very much present with respect to state tax cases. In both venues, a significant portion of the underlying facts consist of or are represented by business documents such as tax returns, agreements, entity organizational documents, invoices, or receipts. The hesitancy or refusal of counsel to stipulate to such documentary evidence results in an increased burden and cost for both parties when opposing counsel must then introduce documents and/or witnesses to establish a basic factual matter that could have been stipulated, and burdens the Court with unnecessary trial time.

The proposed rule contains provisions to address concerns that it might somehow be overbearing. Subsection (d) allows for objections to be noted in a stipulation so that the Court can consider them. Subsection (e) provides that a stipulation is binding only with respect to the pending case, and cannot be used against any of the parties in any other case or proceeding. Although under the proposed rule, the Court will not permit a party to a stipulation to qualify, change, or contradict a stipulation, the Court may allow a party to do so where justice requires.

In Subsection (f), the proposal also contains procedures for a motion to compel a stipulation under normal R. 1:6 motion practice. Critically, a significant portion of these procedures is designed to arrange for the parties, under the Court’s supervision, to stipulate on those matters on which they can agree. Furthermore, pursuant to Subsection (f)(4), “[n]or will a genuinely controverted or doubtful issue of fact be determined in advance of trial. The Court will determine whether a genuine dispute exists, or whether in the interests of justice a matter ought not be deemed stipulated.”

The same public policy reasons that justify the United States Tax Court's implementation of this rule warrant its adoption by the New Jersey Tax Court in state tax matters.

COMMENTS IN OPPOSITION TO RULE PROPOSAL: STIPULATIONS

This proposed rule apparently seeks to encourage stipulations of agreed facts. As drafted, however, this proposed rule raises many points of dispute and reflects a lack of clarity and consideration of the mechanics of New Jersey State Tax Court practice.

First, it is unclear why this proposed rule is tailored solely to State tax cases. Many facts and documents could also be stipulated in local property tax cases, thus addressing the vast majority of the Tax Court's cases rather than focusing only on State tax cases, which represent approximately 1% of the docket caseload of the Court.

Second, however, it is unclear why a rule "requiring" stipulations of fact should be imposed in Tax Court practice, when a similar rule does not exist in New Jersey's Superior Court practice. The Tax Court is a collateral trial court and much of the practice of the Superior Court is incorporated into the Part VIII rules, by reference. As previously noted, only 6 states have Tax Courts. None of those Tax Courts requires or even hints at requiring stipulations of agreed facts. In fact, a review of all 33 states with some form of Tax Court or Tax Tribunal has failed to show a single state that requires such a stipulation of agreed facts.

In addition, because discovery continues through 30 days before trial and stipulations of fact must be approved by both the Division of Taxation and the Division of Law in State Tax cases, "requiring" stipulations of fact is highly burdensome and time-consuming for the State litigants and their counsel. The 45-day motion practice suggested by the proposed rule is also inconsistent with the close of discovery 30 days prior to trial. In addition, orders to show cause are rarely used in the Tax Court (Paragraph (f)(2)) and will be highly disruptive to all litigants and their clients.

Third, contrary to the suggestion of the rule proposers during discussion at the sub-Committee level and as a corollary, State litigation and agency resources are very limited. In addition, the Tax Court is not subject to Best Practices and is not subject to the expedited practice that the rule as proposed appears to seek to impose.

Fourth, the language used in the proposed rule is overly broad and vague. It is believed that this Rule will result in additional litigation, interlocutory appeals and thus additional time and expense for the Court and all litigants. By way of limited example, the language of Paragraph (a)(1) speaks of "fairly should be reached" and "which fairly should not be in dispute;" Paragraph (a)(2) discusses "logical order[ing];" and Paragraph (f)(D) discusses "reasonable access to those sources" These terms (i.e., "fairly," "fairly should," "logical" ordering, "reasonable access") are highly subjective and will undoubtedly require Court review on a case-by-case, perhaps item-by-item basis.

Fifth, the proposed rule should not require stipulations of facts that are only known to one party but are unknown to the other party. Parties should not be required to stipulate without sufficient documentation and proof by the proposing party that the fact in question is, in fact, true. Unlike the United States Tax Court, from which this Rule is derived, the New Jersey Tax Court makes determinations based on de novo review, and taxpayers are allowed to forego the administrative process and file a direct appeal to the Tax Court. In such situations, there are often facts which are not, and possibly could not be known by both parties. This is precisely why the statutes, case law, and court rules require the Plaintiff to bear the burden of proving its case. Therefore, the Rule should be amended to include language that only requires or seeks stipulation as to facts and/or documents and/or evidence that is known to be true by both parties, regardless of materiality or relevance.

Finally, “requiring” stipulations of fact appears to limit access to the courts and violates due process and fundamental fairness for all litigants in the Tax Court. As currently drafted, this proposed Rule is ill-conceived and should be rejected by the full Committee.

RULE PROPOSAL – DISCOVERY

RULE 8:6. PRETRIAL PROCEEDINGS

Revision to R. 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 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.

(2) In state cases the ~~150~~ 180 days for the completion of discovery shall commence to run ~~60 days after the service of the complaint~~ on the date the answer is served. At any time the court, in its discretion or by agreement between the parties, may extend or reopen the time to complete discovery. Completion of discovery shall be coordinated with pretrial conferences and memoranda.

(3) In state tax cases, the party served with interrogatories and document requests shall serve answers or responses thereto upon the party propounding them within 60 days after being served with the interrogatories and document requests. Subject to the limitations in R. 8:6-1(a)(2), by written consent of the parties made within the 60-day period, the parties may enlarge such time period without court approval.

(4) In state tax cases, no party shall serve as of right on any other party more than thirty (30) interrogatories, including interrogatories subsidiary or incidental to, or dependent

upon, other interrogatories, and however the same may be grouped, combined or arranged. This limitation shall not include the eight (8) standard state tax case interrogatories that may be served by each of the parties. However, for good cause shown, the court may allow additional interrogatories to be served. Leave of court must be sought to serve more than thirty (30) interrogatories before serving such interrogatories and must set forth (i) the proposed interrogatories and (ii) the reasons establishing the proffered good cause. Should a party serve more than thirty (30) interrogatories, including interrogatories subsidiary or incidental to, or dependent upon, other interrogatories, and however the same may be grouped, combined or arranged, on any other party without leave of court, no response is required with respect to the interrogatories after the first thirty (30) interrogatories.

[RENUMBER REMAINING RULE PARAGRAPHS]

STANDARD STATE TAX CASE INTERROGATORIES

1. Identify all persons who have knowledge relevant to the issues in this action and state the relationship which each such person has to the plaintiff and/or defendant.
2. Identify all persons whom you intend to call as witnesses in the trial of this case and state each person's relationship to the plaintiff and/or defendant.
3. Identify each expert witness you intend to call at the trial of this matter and indicate the area of expertise of such witness. With respect to each expert witness: (a) set forth the substance of the facts and opinions to which such expert is expected to testify and a summary of the grounds for each opinion; (b) set forth in detail the educational background, work history, professional experience, professional association, or other material upon which you will rely to establish that such witness is an expert in the field or area in which each such person is claimed to be an expert and (c) attach to your answers to these Interrogatories complete and true copies of all written reports rendered by such expert. If any of said reports were oral, set forth in detail the substance of each such report.
4. Identify all persons (except for your attorney herein) with whom the person executing the answers to these Interrogatories consulted in the preparation of such answers.
5. Attach copies of all documents which you will introduce at the trial of this matter.
6. Identify those documents which have been relied upon in answering these Interrogatories.
7. Do you claim that any admissions were made, or do you have knowledge of any admissions having been made, in connection with the within matter? If so, set forth as to each such admission: (a) the name and address of the person making such admission; (b) the date, time and place where such admission was made; (c) the name and address of each person present at the time such admission was made; (d) the complete substance and content of such admission and (e) if the admission is contained in a document or if any document refers to or relates to the admission, identify the document and attach hereto a true copy thereof.
8. Do you claim that any declarations against interest were made, or do you have knowledge of any declarations against interest having been made, in connection

with the within matter? If so, set forth as to each such declaration against interest: (a) the name and address of the person making such declaration against interest; (b) the date, time and place where such declaration against interest was made; (c) the name and address of each person present at the time such declaration against interest was made; (d) the complete substance and content of such declaration against interest and (e) if the declaration against interest is contained in a document, or if any document refers or relates to the declaration against interest, identify the document and attach hereto a true copy thereof.

COMMENTS IN SUPPORT OF RULE PROPOSAL: DISCOVERY

The proposed amendment to R. 8:6(a)(2) coordinates the commencement of discovery with extensions of time to file answers and provides additional time to complete discovery. For example, the time for completion of discovery for state tax matters in the Georgia Tax Tribunal is “six months after the filing of the answer.” Ga. Unif. Super. Ct. 5.1; O.C.G.A. sec. 50-13A-13.

The proposed addition of R. 8:6(a)(3) is meant to assist with efficiency and ease the burden on the Tax Court by allowing parties in state tax cases to obtain extensions on discovery without the need for court involvement during the time period for discovery to be completed.

The language in the proposal addition of R. 8:6(a)(4) to limit interrogatories to 30 interrogatories, including subparts, is intended to streamline the discovery process. This has been revised from an earlier version to provide that each party is entitled to serve 8 “standard” interrogatories in addition to the 30 case-specific interrogatories. This proposal also provides suggested language for the 8 standard state tax case interrogatories, taken from sample discovery typically used by litigants.

The comment to Rule 8:1 provides that the Tax Court rules should conform to the practices and procedures of the other trial courts, yet “retain, insofar as possible, a high degree of expedition in the initiation, progress and determination of the matters constituting the business of the Tax Court.” Motions for additional discovery would be allowed for good cause shown.

Further, caps on the number of discovery requests are in effect in other tax tribunals. It is currently in use for state tax cases by the Massachusetts Appellate Tax Board. 831 CMR 1.25; ALM GL ch. 231, sec. 61. The recently formed Illinois Independent Tax Tribunal also limits interrogatories to 30, including subparts, for state tax cases and requires that a written motion be filed with the tribunal setting forth the proposed interrogatories and the reasons establishing good cause for their use, should a party seek to serve more than 30 interrogatories. 35 ILCS 1010/1-60(a); Ill. Sup. Ct., R. 213(c).

Limiting the amount of interrogatories that a party can propound in a state tax case brings the discovery rule for state tax cases currently employed by the Tax Court in line with local property tax cases. There are currently 23 standard interrogatories for property

valuation cases and an additional 10 interrogatories, with no subparts, allowed without leave of the court in such cases. See Standard Interrogatories to Be Served on Taxpayer, Tax Court of New Jersey (September, 2008).

In a recent example of proposing further reductions to already existing caps on discovery requests, the Judicial Conference of the United States' Standing Committee ("Standing Committee") on Rules of Practice and Procedure voted on June 3, 2013 to approve for public comment a proposed amendment to USCS Fed. Rules Civ. Proc. R. 33 that would reduce the number of interrogatories, including subparts, that a party may serve on another party from no more than 25 to no more than 15, without leave of court. In its report to the Standing Committee, the Advisory Committee on Civil Rules explained that "the purpose [of the proposed amendment] is to encourage the parties to think carefully about the most efficient and least burdensome use of discovery devices."

COMMENTS IN OPPOSITION TO RULE PROPOSAL: DISCOVERY

[NOTE: These comments were prepared before this rule proposal was modified to add the standard Interrogatories.]

The Court Rule as proposed presents several disputed issues for consideration. First, the proposal is internally inconsistent and conflicts with the model form of Pre-Trial Memorandum that was discussed by the State Tax Practice Sub-Committee, approved by the full Supreme Court Committee on the Tax Court during the last Committee term, and was subsequently adopted by the Tax Court Bench. That model Memorandum form permits the extension of discovery until 30 days before trial. See <http://www.judiciary.state.nj.us/taxcourt/Revised%20Pretrial%20Memo.pdf>

Second, it is unclear why this proposal relies on non-Tax Court Massachusetts and Illinois rules. Similarly, the reference to New Jersey local property tax discovery is questioned, since many of the issues in local property tax cases are routine, while the issues in State tax cases can be highly fact-sensitive, such as in Corporation Business Tax nexus cases, Gross Income Tax income categorization cases, and business and operationally-guided Sales and Use Tax cases. In addition, State Tax cases that are filed in the Tax Court of New Jersey stem from non-judicial administrative audits and reviews, where no certification is required as to the accuracy and completeness of information produced to the Division of Taxation.

In addition, the two jurisdictions cited by the proponents do not have Tax Courts in their judiciary branches, but have a Tax Tribunal in the executive branch. As of May 2013, only 6 states had Tax Courts – Arizona, Connecticut, Hawaii, Indiana, New Jersey and Oregon. Of those 6 states, New Jersey and Oregon are the oldest, longest standing of the courts. Notably, the Oregon Tax Court does not apply a limit to the number of interrogatories propounded. Ore. TCR 36. Similarly, neither the Connecticut Tax Court nor the Indiana Tax Court applies a limit to the number of interrogatories propounded. Conn. Gen. Stat. 12-117a et seq.; Ind. R. Tax Ct 1, Ind. R. Trial P. 33.

Third, the proposed rule does not explain why 30 is deemed to be the appropriate number of Initial Interrogatories other than a net opinion that 30 will somehow “streamline the discovery process.” The Hawaii Tax Court allows 60 interrogatories, while Arizona’s Tax Court allows 40 interrogatories plus standard interrogatories, and the number of interrogatories can be extended by agreement between the parties without judicial intervention. Haw. R. Tax App. Ct. 29, Haw. R. Civ. P. 33; Ariz. Tax Ct. R. 2, Ariz. R. Civ. Proc. 33, 33.1. It is suggested instead that the number of Initial Interrogatories should be tailored to the number of paragraphs in a complaint and should be set at: (1) a fixed number of standard interrogatories plus (2) a set number of interrogatories per complaint paragraph, including subparts. Alternatively, the allowed interrogatories should be in addition to the standard interrogatories, which could be drafted and proposed by this Sub-Committee.