

BIENNIAL REPORT OF THE SUPREME COURT COMMITTEE
ON THE TAX COURT OF NEW JERSEY
2022-2023 AND 2023-2024 COURT YEARS
SUBMITTED TO THE SUPREME COURT OF NEW JERSEY

DATE: January 8, 2024

INTRODUCTION

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), state and local tax officials, and others concerned with the operation of the Tax Court of New Jersey. The Committee held four meetings beginning on October 12, 2022, and ending on November 30, 2023. Due to the success of holding these meetings remotely during the COVID-19 public health emergency, the meetings this term continued in this format via the TEAMS application. The 2022-2024 Committee included six subcommittees: the General Practice Subcommittee; the State Tax Practice Subcommittee; the Legislative Subcommittee; the Standard Confidentiality Agreement Subcommittee; the Attorney Certification for Tax Court Practitioners Subcommittee; and the Standard Interrogatories Subcommittee. Given the full implementation of eCourts and the official declaration that the COVID-19 health emergency is under control, the 2022-2024 Committee decided to disband the COVID-19 eFiling/eCourts Subcommittees. The General Practice subcommittee will address these topics if any arise.

The General Practice Subcommittee, chaired by Michael Benak, Esq., was charged with reviewing and updating the existing Part VIII of the NJ Court Rules and existing procedures, to align with new case law and improve practice and policies. The subcommittee met several times during this term to discuss several Part VIII Rules that may require amending. Much effort was spent reviewing R. 8:3-2, Review of Equalization Tables. While the subcommittee supported eliminating the requirement that the defendant, Director, Division of Taxation, file an Answer in Equalization cases, there was no consensus on including language that it can file a counterclaim in such cases. The subcommittee also discussed these additional topics:

- Mandatory Settlement Conferences in local property tax appeals. (R. 8:6-8).
- Third Party Appeal issues in local property tax appeals.
- The interplay between General Practice Rules and Tax Pretrial Conference Rules: R. 4:25-3; 4:25-7; Appendix XXIII; new R. 4:25-8 and R. 8:6-2(a).
- Address the conflict between R. 4:23-5 and R. 8:3-9 by amending R. 8:3-9 to allow a case to be withdrawn after an order dismissing it has been entered.
- Chapter 101 (local property tax) and issues regarding local property in the context of an increasing volume of affirmative appeals seeking to raise an assessment.

The General Practice Subcommittee did not recommend any amendments to the current Rules and proposed all items be carried to the 2024-2026 term.

The State Tax Practice Subcommittee, co-chaired by Deputy Attorney General Heather Anderson and David Shipley, Esq., considered changes to Part VIII Rules for state tax practice. The subcommittee proposed an amendment to R. 8:6-1 to address the issue that often, litigants in state cases do not complete discovery within the required 180 days. To reflect current practice and motivate litigants to engage in discovery in a timely manner, the subcommittee recommended amending the rule to require initial discovery within 90 days after the Answer to the complaint is served, and that such discovery be completed no less than 30 days before trial. The proposal was unanimously approved by the full Committee.

The Legislative Subcommittee, chaired by Nylema Nabbie, Esq., monitored legislative bills which could affect practice in the Tax Court. No statutes were enacted during this Committee cycle that require a change to court rules relating to the Tax Court. However, there was one bill of interest which would formalize

requiring municipalities to return to taxpayers, property taxes paid in error due to an assessor's or owner's mistake. Since this bill and no others were enacted that impact Tax Court, the subcommittee did not recommend any amendments.

The Standard Confidentiality Agreement Subcommittee, chaired by Alex Genato, Esq., considered a standard form of a confidentiality agreement to ensure consistency and protect the interests of all parties. The subcommittee discussed several options for a standard template. It also proposed options for submitting confidential information and discovery to the court, using applications such as SharePoint and eCourts. The subcommittee remained unable to come to a consensus and asked that these items be carried to the 2024-2026 term.

The Attorney Certification for Tax Court Practitioners Subcommittee, chaired by Michael Benak, Esq., monitored the proposed regulations and standards previously developed by the subcommittee and submitted to the Supreme Court Board on Attorney Certification. On the recommendation of the Attorney Certification Board, the draft regulations were updated to designate two separate certifications, one for State Tax and one for Local Property Tax. The Board is reviewing the updated submission and moving it through the established certification procedure.

The Standard Interrogatories Subcommittee co-chaired by William Rogers, Esq. and Martin Allen, Esq., was charged with reviewing and updating the existing Tax Court Standard Interrogatories. After meeting, the subcommittee also determined that drafting a standard form of interrogatory for each of several additional case types would be appropriate. Given the scope of this project, the subcommittee recommended, and the full Committee agreed, this item would be carried to the 2024-2026 term.

The full Committee also approved correcting a typographical error identified in R. 8:6-6.

RULE AMENDMENTS RECOMMENDED FOR ADOPTION

A. Proposed Amendments to Rule 8:6-1 Discovery

In many state tax cases, the 180-day limitation on completion of discovery set forth in R. 8:6-1(a)(2), is not being followed. The subcommittee determined a modification to R. 8:6-1(a)(2) was warranted to specify that discovery may continue past the 180 days, but must be completed at least 30 days before trial, except with leave of court. To prevent the extension opening the possibility of litigants waiting to start discovery until later in the case, the subcommittee added a provision that required initial discovery within 90 days after the answer to the complaint is served. The full Committee voted unanimously to amend the rule as recommended.

The proposed rule amendment follows.

R. 8:6-1 Discovery.

(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) . . . no change.

(2) In state tax cases [the 180 days for the completion of discovery shall commence to run on the date the answer is served.] initial discovery requests shall be made within 90 days of the filing of the answer to the complaint. At any time, the court, in its discretion, or by agreement between the parties, may [extend] modify or reopen the time to initiate or complete discovery. [Completion of discovery shall be coordinated with pretrial conferences and memoranda.] All discovery shall be completed no less than 30 days before trial except upon leave of court. 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. All interrogatory

answers shall first state the question and then beneath the question state the answer to that question. In state tax cases, discovery shall not be served or answered on eCourts Tax.

(3) . . . no change.

(4) . . . no change.

(5) . . . no change.

(6) . . . no change.

(b) . . . no change.

B. Proposed Amendment to Rule 8:6-6. Local Property Tax Cases: Case Management Notice

A typographical error was identified in R. 8:6-6 (“plan” was mis-spelled as “plane”). The full Committee voted unanimously to amend the rule to correct the error.

The proposed rule amendment follows.

8:6-6. Local Property Tax Cases: Case Management Notice

After the filing of a complaint, the Tax Court Management Office shall forward to the parties a case management plan in the form specified by the Tax Court. If the case has been assigned to the standard, small claims, or farmland and exemption track, the case management plan shall state the date by which discovery is required to be completed pursuant to R. 8:6-1(a), the anticipated month and year of trial, the name of the case manager, and the requirements for case management and settlement conferences. The case management **plan[e]** shall also advise that each party, including subsequently added parties, may apply for track reassignment pursuant to R. 8:6-7.

RULE AND NON-RULE AMENDMENTS CONSIDERED

The General Practice Subcommittee considered the issues below that commonly arise in Tax Court practice and might require amendments to the Rules. After several meetings, the subcommittee was unable to come to a consensus on these issues and recommended deferring them for consideration to the 2024-2026 term. The full Committee concurred.

- Amend or eliminate R. 8:6-8, Local Property Tax Cases; Mandatory Settlement Conference Reports, to reflect practice.
- Review appeals which are challenged prior to discovery completion with a motion to dismiss the complaint for failure to state a cause of action. This situation presents a procedural impediment to a resolution of the motion to dismiss. Under Part IV of the court rules the motion is not a pleading, therefore a non-movant can seek to amend the complaint several times while the motion is pending.
- Address the conflict between R. 4:23-5 and R. 8:3-9 by amending R. 8:3-9 and allowing a case to be withdrawn after an order dismissing it has been entered.
- Consider the interplay between General Practice Rules and Tax Pretrial Conference Rules. The applicable rules include R. 4:25-3; 4:25-7; Appendix XXIII; new R. 4:25-8 and R. 8:6-2(a).
- Consider amending R. 8:3-2(c)(1) seeking review of Equalization Table cases promulgated by the Division of Taxes. The subcommittee agreed to eliminating the requirement to file an Answer in such cases but could not come to a consensus about whether to permit counterclaims.

- Non-rule issue raised to consider local property taxation Chapter 101 issues in the context of an increasing volume of affirmative appeals seeking to raise an assessment.

The Standard Interrogatories Subcommittee met several times and made significant progress on rewriting the existing Tax Court standard interrogatories including valuation, exemption, and farmland cases. The subcommittee also determined that drafting a standard form of interrogatory for each of several additional case types would be appropriate, including added/omitted valuation, small claims commercial, farmland rollback, and equalization. The subcommittee successfully agreed to a standard form of small claims interrogatories applicable to residential properties under R. 8:6-1(a)(4). Given the scope of this review, the subcommittee will continue its work in the next Committee term.

Respectfully Submitted,

/s/ Mala Sundar
Hon. Mala Sundar, P.J.T.C.

2022-2024 Supreme Court Committee on the Tax Court

1. Hon. Mala Sundar, P.J.T.C., Chair
2. William Rogers, III, Esq. Vice Chair, Local Property Tax
3. Leah S. Robinson, Esq., Vice Chair, State Tax
4. Martin Allen, Esq.
5. Heather L. Anderson, Deputy Attorney General
6. Michael D. Benak, Esq.
7. Scott Burns, Esq.
8. Richard Carabelli, MAI, CPA
9. Hon. Michael Duffy, J.T.C.
10. Philip Duchesneau, President, AMANJ
11. John J. Ficara, Acting Director, Division of Taxation
12. Michelline Foster, Deputy Attorney General
13. Alex Paul Genato, Esq.
14. Michael Guariglia, Esq.
15. John A. McCann
16. Hon. Joan Bedrin Murray, J.T.C.
17. Nylema Nabbie, Esq.
18. Len Nitti, CPA, MST
19. Hon. Jonathan Orsen, J.T.C.
20. Cara Parmigiani, Esq.
21. Shelley Reilly, Assistant Director, Division of Taxation
22. Michael Rienzi, Esq.
23. Michael Schneck, Esq.
24. David Shipley, Esq.
25. Michelle Spencer, Esq.
26. William Steinhart, MAI, CRE

27. Anthony Tancini, Deputy Attorney General
28. Peter J. Ulrich, Esq.
29. Gerald A. Vitarello, Tax Collector
30. Maria Yoo, Esq.

Staff to the Committee:

1. Cheryl A. Ryan, Clerk/Administrator, Tax Court of New Jersey
2. Lynne E. Allsop, Deputy Clerk, Tax Court of New Jersey