BIENNIAL REPORT OF THE

SUPREME COURT COMMITTEE ON THE TAX COURT

2006-07 and 2007-08 COURT YEARS

SUBMITTED TO THE SUPREME COURT OF NEW JERSEY

January 15, 2008

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INTRODUCTION

A. In General

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 held five meetings during the period beginning February 6, 2007 and ending January 9, 2008. Numerous topics and issues were covered and discussions were detailed and vigorous.

The Chairman reappointed and continued two standing subcommittees: the DCM Rules Integration Subcommittee, co-chaired by Susan A. Feeney and Peter J. Zipp, and a Small Claims Jurisdiction Subcommittee, chaired by Presiding Judge Joseph C. Small. Other subcommittees were appointed on an as-needed basis.

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recommended legislation, case management and court procedures, court forms, small claims procedures and published and unpublished Tax Court opinions. The projects which consumed substantially all of the Committee's time were (1) review and integration of the Local Property Tax Differentiated Case Management Pilot Program and the related Tax Court DCM Program Rules into the rules in Part VIII generally governing practice and procedure of all actions in the Tax Court, and (2) continued review and study of local property tax small claims jurisdiction.

B. Tax Court DCM Program Rules Integration.

By Order dated October 7, 1996, based upon comprehensive recommendations of the Committee, the Supreme Court authorized the establishment of a project in Bergen County to be known as the "Bergen County Property Tax Differentiated Case Management Pilot Program" and adopted a set of differentiated case management ("DCM") rules applicable to the Bergen County Pilot Program. The Bergen County DCM Pilot Program was applicable only to local real property tax cases (as opposed to state tax cases) and was effective and commenced on January 1, 1997. Based upon Committee recommendations to the Supreme Court in a submission dated September 1, 1999, by Order dated October 12, 1999, the Supreme Court authorized expansion of the DCM Pilot Program to Hudson County effective January 1, 2000. In that same Order, the Supreme Court also changed the name of the Pilot Program to the "Local Property Tax Differentiated Case Management Pilot Program" and modified the name of the DCM Rules to the "Tax Court DCM Program Rules."

As a result of its success in improving case processing in Bergen and Hudson Counties with less judicial involvement, the Committee recommended in its Biennial Report to the Supreme Court for the 2002-03 and 2003-04 Court Years that the Local Property Tax Differentiated Case Management Pilot Program be expanded to cover all local property tax cases filed in the Tax Court. By Order dated July 28, 2004, the Supreme Court authorized the expansion of the DCM Pilot Program to all cases filed in the Tax Court on or after January 1, 2005.

The Committee also recommended in its Biennial Report to the Supreme Court for the 2002-03 and 2003-04 Court Years that the Tax Court DCM Program Rules continue to be segregated from the rules in Part VIII generally governing the practice and procedure and all actions in the Tax Court. The Committee felt that it needed additional input concerning the impact of the

DCM Pilot Program on a statewide basis before recommending a complete and permanent merger of the Tax Court DCM Program Rules into the regular rules set forth in Part VIII.

Since adoption of the initial DCM Pilot Program, the Tax Court has continued to maintain a DCM working group and the Committee has continued to maintain its own DCM Subcommittee in order to monitor and seek improvements to the DCM Program Rules. Feedback was received from the Bar as a result of statewide DCM training programs held by the Tax Court Management Office. In addition, representatives from the Tax Court and the Committee have participated in Bench/Bar meetings sponsored by the Taxation Section of the New Jersey State Bar Association to review and discuss DCM practice and procedure.

The Committee believes that the Tax Court DCM Program Rules have been thoroughly tested and have been proven to be effective. The Committee recommends that the Local Property Tax Differentiated Case Management Pilot Program be discontinued and the Tax Court DCM Program Rules be permanently merged and integrated into the regular rules set forth in Part VIII. The bulk of the rule amendments proposed in Part I of this Biennial Report effect this integration.

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. 8:2(a)—General Jurisdiction.

Since there is no longer a "Director of the Division of Motor Vehicles," the Committee proposes to amend R. 8:2(a) to simply refer to the "Motor Vehicle Commission."

The text of the proposed amendment follows.

RULE 8:2. REVIEW JURISDICTION

(a) General Jurisdiction. The Tax Court shall have initial review jurisdiction of all final decisions including any act, action, proceeding, ruling, decision, order or judgment including the promulgation of any rule or regulation of a County Board of Taxation, the Director of the Division of Taxation, any other state agency or official (including the **[Director of the Division of]** Motor Vehicle**[s]** **Commission**), or any county or municipal official with respect to a tax matter (including the realty transfer fee). The Tax Court shall have initial jurisdiction to review those local property tax assessments when review is sought pursuant to N.J.S.A. 54:51A-2 (direct review in the Tax Court of certain appeals). The Tax Court shall also have jurisdiction over any action cognizable in the Superior Court that raises any issue as to which expertise in taxation is desirable and that has been transferred to the Tax Court pursuant to Rule 4:3-4(a).

(b) . . . no change

(c) . . . no change

Note: Adopted June 20, 1979 to be effective July 1, 1979; paragraphs (a) and (c) amended July 8, 1980 to be effective July 15, 1980; paragraph (c) amended July 22, 1983 to be effective September 12, 1983; paragraph (a) amended July 26, 1984 to be effective September 10, 1984; paragraph (a) amended July 10, 1998, to be effective September 1, 1998 paragraph (c) amended July 27, 2006 to be effective September 1, 2006**; paragraph (a) amended , 2008 to be effective September 1, 2008.**

B. Proposed Amendment to R. 8:3-2—Pleadings Allowed.

The Committee proposes to amend R. 8:3-2 in order to integrate applicable Tax Court DCM Program Rules.

The text of the proposed amendment follows.

8:3-2. Pleadings Allowed

(a) Generally. Pleadings shall consist of the complaint and such responsive pleadings as shall be filed in the action. **A case information statement shall be attached to the complaint.**

(b) Local Property Tax Cases. Every defendant may but need not file an answer **[except that in state tax cases (other than cases governed by R. 8:11, Small Claims) there shall be a complaint and an answer. In local property tax matters there]. There** may be a counterclaim and an answer to a counterclaim denominated as such. Unless by order of the court, no other pleading is allowed, except in response to amended and supplementary pleadings.

(c) State Tax Cases. In state tax cases (other than cases governed by R. 8:11, Small Claims), there shall be a complaint and an answer. Unless by order of the Court, no other pleading is allowed, except in response to amended and supplementary pleadings.

Note: Adopted June 20, 1979 to be effective July 1, 1979; amended July 16, 1981 to be effective September 14, 1981**; amended and divided into subparagraphs to integrate former Local Property Tax Differentiated Case Management Pilot Program rule , 2008 to be effective September 1, 2008**.

C. Proposed Amendment to R. 8:3-5(b)—Contents of Complaint in State Tax Cases.

Since there is no longer a "Director of the Division of Motor Vehicles," the Committee proposes to amend R. 8:3-5(b) to simply refer to the "Motor Vehicle Commission."

The text of the proposed amendment follows.

8:3-5. Contents of Complaint; Specific Actions

(a) . . . no change

(b) State Tax Cases. (1) A Case Information Statement in the form specified by the Tax Court shall be attached to the face of the complaint, and a copy of the action, determination or deficiency notice of the Director of the Division of Taxation or of any other state agency or officer (including the **[Director of the Division of]** Motor Vehicle**[s]** **Commission**) with respect to a tax matter, or of a county recording officer with respect to the realty transfer tax, if any, to be reviewed shall be attached to the complaint. The complaint may include in separate counts allegations with respect to separate taxes or assessments.

(2) . . . no change

(c) . . . no change

Note: Adopted June 20, 1979 to be effective July 1, 1979; paragraphs(a)(1), (2) and (3) amended July 8, 1980 to be effective July 15, 1980; paragraphs (a)(l) and (3) amended July 15, 1982 to be effective September 13, 1982; paragraph (a)(4) amended July 22, 1983 to be effective September 12 1983; paragraph (b) amended November 1, 1985 to be effective January 2, 1986; paragraphs (a)(l), (2) and (4) amended November 5, 1986 to be effective January 1,1987; paragraph (b)(2) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a)(1), (b)(1) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (a)(4) amended July 10, 1997 to be effective September 1, 1997**; paragraph (b)(1) amended _____, 2008 to be effective September 1, 2008.**

D. Proposed Amendments to R. 8:4-1(b) and (c)—Time for Filing Complaint.

Since there is no longer a "Director of the Division of Motor Vehicles," the Committee proposes to amend R. 8:4-1(b) to simply refer to the "Motor Vehicle Commission." The Committee proposes to amend R. 8:4-1(c) in order to make a more generic reference to the homestead credit, rebate or refund programs administered by the Division of Taxation, rather than identify those programs by name.

The text of the proposed amendments follows.

8:4-1. Time for filing Complaint

The time within which a complaint may be filed in the Tax Court is as follows:

(a) . . . no change

(b) State Tax Matters. Complaints seeking to review actions of the Director of the Division of Taxation, any other state agency or officer (including the **[Director of the Division of**] Motor Vehicle**[s]** **Commission**) with respect to a tax matter, or a county recording officer with respect to the realty transfer tax shall be filed within 90 days after the date of the action to be reviewed.

(c) Tax Rebate Matters. Complaints seeking review of a final determination of the Director of the Division of Taxation with respect to **[a homestead tax rebate claim or NJ SAVER tax rebate claim]** **any homestead credit, rebate or refund program administered by the Division of Taxation**, shall be filed within 90 days of the 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 Ju1y 14, 1992 to be effective September 1, 1992; paragraph (c) caption and text amended July 12, 2002 to be effective September 3, 2002**; paragraphs (b) and (c) amended , 2008 to be effective September 1, 2008.**

E. Proposed Amendment to R. 8:5-3(b)(1)—On Whom Served in State Tax Actions.

Since there is no longer a "Director of the Division of Motor Vehicles," the Committee proposes to amend R. 8:5-3(b) to simply refer to the "Motor Vehicle Commission." The Committee also proposes to amend R. 8:5-3(b) in order to make a more generic reference to the homestead credit, rebate or refund programs administered by the Division of Taxation, rather than identify those programs by name.

The text of the proposed amendments follows.

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) . . . no change

(6) . . . no change

(7) . . . no change

(8) . . . 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 Vehicle**[s]** **Commission**) 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 homestead or NJ SAVER rebate application filed pursuant to N.J.S.A. 54:4-8.57, et seq.]** **any homestead credit, rebate or refund program administered by the Division of Taxation** In **[homestead or NJ SAVER rebate]** cases **arising under any homestead credit, rebate or refund program administered by the Division of Taxation** the complaint shall be served upon the Attorney

General by the Clerk of the Tax Court 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 July 12, 2002 to be effective September 3, 2002; paragraphs (a)(7) and (8) amended July 27, 2006 to be effective September 1, 2006**; paragraph (b)(1) amended _____, 2008 to be effective September 1, 2008.**

F. Proposed Amendment to R. 8:5-4—Mode of Service of Complaint.

The Committee proposes to amend R. 8:5-4(6) in order to make a more generic reference to the homestead credit, rebate or refund programs administered by the Division of Taxation. This proposed change complements the changes proposed by the Committee for R. 8:5-3(b)(1).

The text of the proposed amendment follows.

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) . . . no change

(4) . . . no change

(5) . . . no change

(6) Upon the Attorney General of the State of New Jersey in accordance with the provisions of R. 4:4-4(a)(7), except that service by the Tax Court Administrator in **[Homestead Rebate]** **any homestead credit, rebate or refund program** cases under R. 8:5-3(b)(1) may be made in such manner as the Presiding Judge of the Court may from time to time prescribe.

Note: Adopted June 20, 1979 to be effective July 1, 1979; paragraphs (a)(4) and (6) amended July 8, , 1980 to be effective July 15, 1980; paragraph (a)(2) amended July 15, 1982 to be effective September 13, 1982; paragraph (a)(3) amended November 2, 1987 to be effective January 1, 1988; caption and text amended June 29, 1990 to be effective September 4, 1990; paragraph (6) amended July 13, 1994 to be effective September 1, 1994**; paragraph (6) amended 2008 to be effective September 1, 2008.**

G. Proposed Amendments to R. 8:6—Pretrial Proceedings, Assignment to Tracks and Case Management.

The Committee proposes to amend R. 8:6-1 and R. 8:6-2 in order to integrate applicable Tax Court DCM Program Rules. The Committee also proposes new R. 8:6-4, R. 8:6-5, R. 8:6-6, R. 8:6-7 and R. 8:6-8 in order to integrate applicable Tax Court DCM Program Rules.

In addition to the Tax Court DCM Program Rules integration, the Committee proposes to amend (1) R. 8:6-1(b)(1) to require any party intending to rely upon a valuation expert to furnish a copy of the expert's written appraisal report to the court in addition to any opposing party; and (2) R. 8:6-1(b)(2) to require any party intending to rely on sales or rentals of comparable properties to furnish a list of the comparable sales or rentals to the court in addition to any opposing party. These changes codify the current practice set forth in case management notices which require the court and each opposing party to be provided copies of appraisal reports and comparable sales or rentals.

The Committee also proposes to amend R. 8:6-8 to allow the mandatory settlement conference to be conducted by telephone. The Committee felt this conference could be conducted effectively by telephone and use of this option would save time and be more cost effective for all litigants.

The text of the proposed amendments and new rules follows.

RULE 8:6. PRETRIAL PROCEEDINGS**; ASSIGNMENT TO TRACKS AND CASE MANAGEMENT**

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, as directed in the case management notice, or as otherwise directed by the court.**

(2) 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) 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]2**) 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. The]** **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]3) In actions to review any equalization table, answers to interrogatories shall be served within 20 days from the date of service of the interrogatories.**

(4) In local property tax cases assigned to the [**Small Claims Division]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 **[cost]costs** of improvements within three **(3)** 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 shown.

([**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.

(6) In local property tax cases the following time limits shall be applicable to discovery:

(i) Small Claims Track Cases. Discovery shall be completed within 75 days of the filing of the complaint. A discovery request for the items specified in Rule 8:6-1(a)(4) shall be responded to within 30 days after being served with the request.

(ii) Standard Track Cases. Discovery shall be completed within 150 days of the filing of the complaint.

(iii) Complex Track Cases. Discovery shall be completed within 150 days of the filing of the complaint unless extended by the court.

(iv) Expedited Track Cases. Discovery shall be completed within the time set by the court.

(v) Farmland and Exemption Track. Discovery shall be completed within 150 days of the filing of the complaint.

(b) Exchange of Appraisals and Comparable Sales and Rentals. Where the valuation of property is an issue:

(1) A party intending to rely upon the testimony of any person testifying as a valuation expert **must furnish an expert report containing the information in R. 8:6-1(b)(2). A party intending to rely upon the testimony of any person testifying as a valuation expert** shall furnish **the court and** each opposing party with a copy of the written appraisal report of the expert as follows:

[(i) in cases where a pretrial conference is held, at a time and in a manner fixed by the court, but no later than the time fixed by a case management notice or order, or

(ii) in cases where no pretrial conference is held, within the time fixed by a case management notice or order.]

(i) Standard Track Cases. 30 days prior to the trial date as designated by the court. The submission of this written appraisal report is in addition to the requirement that plaintiff's counsel furnish an appraisal or a demand for reduction in assessment with support therefor to counsel for defendant pursuant to R. 8:6-8.

(ii) Small Claims Track. 20 days prior to the trial date set forth in the case management notice or 20 days prior to such other trial date as designated by the court.

(iii**) All other track cases. As directed by the court.**

(iv) The court in its discretion may grant additional time for discovery **[of appraisers and appraisal reports]** following the exchange of appraisal reports.

(2) A party intending to rely on sales or rentals of comparable **[property]properties** shall furnish **the court and** each opposing party with a list of comparable sales or rentals intended to be established by proof which list shall set forth as to each sale or rental the location of the property by block, lot, street, street number and municipality and, as to each sale, the name of seller and purchaser, date of sale, the consideration, book and page number of the recording of the deed and, if available, the **[Form]form** SR1A identification number of the Division of Taxation and, as to each rental, name of landlord and tenant, date of lease and relevant lease terms**[,]. Such list shall be submitted as directed by the court or** as follows:

(i) **[in cases where a pretrial conference is held, at a time and in a manner fixed by the court, but no later than 10]**__**Standard Track Cases. 30**__ days prior to the **[first date fixed for trial, or]**__**trial date as designated by the court.**__

[(ii) in cases where no pretrial conference is held, 10 days prior to the date of trial.]

__**(ii) Small Claims Track. 20 days prior to the trial date set forth in the case management notice or such other trial date as designated by the court.**__

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 (a)(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; new paragraph (a)(1) added, former paragraphs (a)(1), (a)(2), and (a)(3) amended and redesignated as paragraphs (a)(2), (a)(3), and (a)(4), and former paragraphs (a)(4) and (a)(5) redesignated as paragraphs (a)(5) and (a)(6) July 12, 2002 to be effective September 3, 2002**;** __**caption amended and paragraphs (a) and (b) amended and reorganized to integrate former Local Property Tax Differentiated Case Management Pilot Program rule , 2008 to be effective September 1, 2008**__**.**

8:6-2. Pretrial Conferences

(a) Local Property Tax Cases. Pretrial conferences may be held at the discretion of the court either on its own motion or upon a party's written request. The request of a party for a pretrial conference shall include a statement of the facts and reasons supporting the request. The court, on its own motion or at a party's request, may direct that a pretrial conference be conducted by telephone. In those cases in which a pretrial conference has been scheduled, each party shall file with the court and exchange with each other party its pretrial memorandum no less than seven (7) business days before the pretrial conference. The pretrial memorandum shall be in the form prescribed by the Tax Court.

(b) State Tax Cases. Pretrial conferences may be held pursuant to R. 4:25-1, et seq. There shall be no separately scheduled pretrial conferences for small claims division matters, except for good cause.

Note: Adopted June 20, 1979 to be effective July 1,1979; amended July 15, 1982 to be effective September 13, 1982**; former rule designated as paragraph (b) and new paragraph (a) adopted to integrate former Local Property Tax Differentiated Case Management Pilot Program rule 2008 to be effective September 1, 2008.**

8:6-4. Local Property Tax Cases; Tracks and Subtracks; Standards for Assignment

(a) Local Property Tax Cases. Every local property tax action filed in the Tax Court shall be assigned, as prescribed by this rule, to the standard track, the complex track, the expedited track, the farmland assessment and exemption track, or small claims track, in accordance with the following criteria:

(1) Standard Track. An action not qualifying for assignment to the complex track, farmland assessment and exemption track, small claims track, or expedited track shall be assigned to the standard track.

(2) Complex Track. An action shall ordinarily be assigned to the complex track for individual judicial management if it appears likely that the case will require a disproportionate expenditure of court and litigation resources in its preparation for trial by reason of the number of parties involved, the number of claims and defenses raised, the legal difficulty of the issues presented, the factual difficulty of the subject matter, or a combination of these or other factors.

(3) Expedited Track. An action shall ordinarily be assigned to the expedited track where specific disposition times are imposed by statute or where it appears that tax policy considerations as reflected in the statutes or court rules demonstrate that a summary proceeding would be more appropriate than a plenary trial.

(4) Farmland Assessment and Exemption Track. An action involving the review of a farmland assessment, rollback tax assessment and/or exemption shall ordinarily be assigned to the farmland assessment and exemption track.

(5) Small Claims Track. An action shall ordinarily be assigned to the small claims track if it is indicated on the case information statement that the matter is within the small claims jurisdiction pursuant to R. 8:11.

After track assignment has been made, the special procedures prescribed by these rules for each track governing such matters as discovery, motion practice, case management and pretrial conferences and orders, and the fixing of trial dates shall apply.

Note: Former Local Property Tax Differentiated Case Management Pilot Program rule adopted , 2008 to be effective September 1, 2008.

8:6-5. Local Property Tax Cases; Track Assignment

(a) Local Property Tax Cases. The parties shall be advised by the Tax Court Management Office of the track assignment. At the discretion of the Presiding Judge, the track assignment may be advanced or delayed. If all attorneys agree as to the appropriate track assignment, the assigned judge shall not designate a different track except for good cause and only after giving all attorneys the opportunity to object, either in writing or orally, to the proposed designation. If all attorneys do not agree, the designation shall be made by the assigned judge. If it is not clear from an examination of the information provided which track assignment is most appropriate, the case shall be assigned to the track that affords the greater degree of management.

Note: Former Local Property Tax Differentiated Case Management Pilot Program rule adopted , 2008 to be effective September 1, 2008.

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

Upon the filing of a complaint, the Tax Court Management Office shall forward to the parties a case management notice in the form specified by the Tax Court. Forthwith upon the making of the track assignment, the Tax Court Management Office shall send written notice thereof to all parties in the action. If the case has been assigned to the standard, small claims or farmland and exemption tracks, the notice shall state the date upon 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 notice shall also advise that each party, including subsequently added parties, may apply for reassignment pursuant to R. 8:6-7.

Note: Former Local Property Tax Differentiated Case Management Pilot Program rule adopted , 2008 to be effective September 1, 2008.

8:6-7. Local Property Tax Cases; Track Reassignment

An action may be reassigned to a track other than that specified in the case management notice on application of a party or on the court's own motion. The application may be made informally to the assigned judge and shall state with specificity the reasons why the original track assignment is inappropriate. No formal motion for track reassignment is required unless the assigned judge so directs. Any such application shall be made not later than the date of filing of the mandatory settlement conference report pursuant to R. 8:6-8. A copy of such application shall be served upon all parties and any objections to such application shall be submitted to the assigned judge within 10 days of said service.

Note: Former Local Property Tax Differentiated Case Management Pilot Program rule adopted , 2008 to be effective September 1, 2008.

8:6-8. Local Property Tax Cases; Mandatory Settlement Conference

In all local property tax cases assigned to the standard track, the parties shall hold a mandatory settlement conference not later than four (4) months before the scheduled trial month as set forth in the case management notice. The date for the mandatory settlement conference shall be fixed by the designated case manager and shall be provided to the parties in the form specified by the court. Counsel for all parties and the assessor or the taxing district's appraisal consultant shall be present at the mandatory settlement conference which may be conducted by telephone or in person at the office of the municipal assessor or such other place as agreed upon by the parties. At least seven (7) days prior to the date fixed for the mandatory settlement conference, plaintiff's counsel must furnish to defendant's counsel an appraisal by plaintiff's appraisal expert in the form specified by the court or a demand for reduction in assessment with support therefor. Results of the mandatory settlement conference shall be reported by the parties to the case manager in the form specified by the court within ten (10) days of the mandatory settlement conference. The mandatory settlement conference report shall include certifications that initial standard form interrogatories have or have not been served and answered by each party. The parties shall have ten (10) days from the date of notice of noncompliance to comply with the requirements of this rule. The failure of any party to receive a notice of noncompliance shall not relieve the party of the duty to comply.

Note: Former Local Property Tax Differentiated Case Management Pilot Program rule amended and adopted , 2008 to be effective September 1, 2008.

H. Proposed Amendment to R. 8:8-5—Adjournments.

The Committee proposes to amend R. 8:8-5 in order to integrate applicable Tax Court DCM Program Rules. In addition to the Tax Court DCM Program Rules integration, the Committee proposes to further amend R. 8:8-5(b) to change the word "or" to "and" in the third sentence of that paragraph. The Committee concluded that use of the word "or" was a typographical error and that the conjunctive word "and" was intended to be used by the drafters of the Tax Court DCM Program Rules.

8:8-5. Adjournments

(a) State Tax Cases. Adjournments of pretrial conferences and trials will be granted only for good cause shown and may be subject to sanctions as provided by R. 1:2-4(a). Routine adjournments will not be permitted.

(b) Local Property Tax Cases. Except as provided in subsection (c) herein, adjournments of pretrial conferences and trials will be granted only for good cause shown and may be subject to sanctions as provided by R. 1:2-4(a). Routine adjournments will not be permitted. Failure to file the mandatory settlement conference report and certify that answers have been provided by all parties to standard form interrogatories shall result in a mandatory in-person conference with the assigned trial judge. The sanctions as provided by R. 1:2-4(a) other than dismissal of the complaint shall also be applicable to any party who without good cause fails to attend a mandatory settlement conference scheduled pursuant to R. 8:6-8.

(c) In standard track local property tax cases having an assigned trial date within fourteen (14) months after the date of the filing of the complaint, the case manager, having confirmed that the parties have complied with the requisite procedures of R. 8:6-8, shall grant a request for an adjournment by the non-defaulting party within thirty (30) days after the scheduled mandatory settlement conference pursuant to R. 8:6-8, and shall schedule the trial after the fourteenth (14th) month but not later than the eighteenth (18th) month following the filing of the complaint.

Note: Adopted June 20, 1979 to be effective July 1, 1979**; former rule designated as paragraph (a) and new paragraphs (b) and (c) adopted to integrate former Local Property Tax Differentiated Case Management Pilot Program rule , 2008 to be effective September 1, 2008.**

I. Proposed Amendment to R. 8:11—Small Claims Division.

The Committee proposes to amend R. 8:11 to identify each paragraph with a letter designation and to integrate applicable Tax Court DCM Program Rules.

The text of the proposed amendment follows.

RULE 8:11. SMALL CLAIMS DIVISION; PRACTICE AND PROCEDURE

(a)(1) The small claims division will hear all state tax cases in which the amount of refund claimed or the taxes or additional taxes sought to be set aside with respect to any year for which the amount in controversy as alleged in the complaint does not exceed the sum of $2,000 exclusive of interest and penalties. **(2)** The small claims division will hear all local property tax cases in which the property at issue is a class 2 property (1-4 family residence) or a class 3A farm residence. **Local property tax cases in the small claims division shall be assigned to the small claims track**.

[The Tax Court Administrator shall assign complaints as appropriate to the small claims division.]

(b) The general rules of practice and procedure in the Tax Court shall apply to the small claims division[**; however, discovery is limited], except** as **otherwise** provided in **[R. 8:6-1(a)(5) and the]Part VIII. A** pretrial conference may be held at the time **[that]** the case is scheduled for **a** hearing. The pretrial conference and the hearing shall be informal and the court may hear such testimony and receive such evidence as it deems necessary or desirable for a just and equitable determination of the case. All testimony shall be given under oath and a verbatim record shall be made of the proceeding.

(c) A complaint for review of a local property tax assessment on property which is in common ownership with and contiguous to other property will be regarded as a small claims complaint for all purposes, including assignment and filing fee calculation, only if each of the separately assessed parcels included in the complaint is within the jurisdiction of the small claims division. If one or more of the separately assessed parcels is outside the jurisdiction of the small claims division, the complaint shall not be regarded as a small claims complaint.

(d) In state tax cases, if it appears at any time before the close of proofs that the amount of refund claimed or the taxes or additional taxes sought to be set aside or amount in controversy exceeds the jurisdictional amount of the small claims division, the relief to be granted need not be limited to such jurisdictional amount, and the court may in its discretion retain the matter in the small claims division or transfer the matter to the general calendar.

(e) In local property tax cases, if it appears at any time before the close of proofs that a parcel of property under appeal is neither a class 2 property (1-4 family residence) nor a class 3A farm residence, and therefore not within the jurisdiction of the small claims division, the court may in its discretion retain the matter in the small claims **[division] track** or transfer the matter to the **[general calendar] standard track**.

Note: Adopted June 20, 1979 to be effective July 1, 1979; amended July 22, 1983 to be effective September 12, 1983; amended November 5, 1986 to be effective January 1, 1987; amended November 7, 1988 to be effective January 2, 1989; amended July 13, 1994 to be effective September 1, 1994; amended July 5, 2000 to be effective September 5, 2000; amended July 28, 2004 to be effective September 1, 2004**; each paragraph identified by a letter designation and paragraphs (a), (b) and (e) amended to integrate former Local Property**

Tax Differentiated Case Management Pilot Program rule , 2008 to be effective September 1, 2008.

J. Proposed Amendment to R. 8:12(d)—Matters Exempt From Filing Fees.

The Committee proposes to amend R. 8:12(d) in order to make a more generic reference to the homestead credit, rebate or refund programs administered by the Division of Taxation, rather than identify these programs by name.

The text of the proposed amendment follows.

RULE 8:12. FILING FEES

(a) . . . no change

(b) . . . no change

(c) . . . no change

(d) Matters Exempt from fee.

(1) No fee shall be paid upon the filing of a complaint within the small claims jurisdiction in an action where the sole issue is the eligibility for **[a homestead tax rebate]** **any homestead credit, rebate or refund program administered by the Division of Taxation** or a senior citizen's or veteran's exemption or deduction.

(2) . . . no change

Note: Adopted June 20, 1979 to be effective July 1, 1979; amended July 22, 1983 to be effective September 12, 1983; paragraph (d) redesignated (d)(1) and paragraph (d)(2) adopted November 5, 1986 to be effective January 1, 1987; paragraphs (a), (b) and (c) amended July 9, 1991 to be effective July 10, 1991; paragraphs (a), (b) and (c) amended, paragraph (c)(2) redesignated (c)(2)(i) and paragraph (c)(2)(ii) adopted July 10, 1997, to be effective September 1, 1997; paragraph (b) and (c)(2) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a), (c)(1), (c)(2)(i), (c)(2)(ii) and (c)(3) amended July 1, 2002 to be effective immediately; paragraphs (a) and (b) amended July 27, 2006 to be effective September 1, 2006**; paragraph (d)(1) amended , 2008 to be effective September 1, 2008.**

PART II—RULE AMENDMENTS CONSIDERED AND REJECTED

The Committee considered and rejected a proposed amendment to Tax Court DCM Program Rule 8:8-5(c) to expand the period of time to reschedule an adjourned trial date. The proposal would have allowed an adjourned trial date to be scheduled after the eighteenth month but not later than the twenty-fourth month following the filing of the complaint. The Committee felt the current time frame in the rule (trial date to be scheduled after the fourteenth month but not later than the eighteenth month following the filing of the complaint) has not prejudiced any litigants and would not bring any significant improvement to Tax Court case administration and practice.

PART III — OTHER ACTIONS AND RECOMMENDATIONS

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

A. Availability of Unpublished Opinions.

A majority of the Committee continues to recommend that unpublished opinions prepared by the Tax Court be made available to the public on the internet.

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. The Committee also realizes that rules differentiating between the authority of and citation to unpublished versus published opinions are essential if the designation of some but not all opinions for publication is to continue. It would appear that the publicly circulated state law journals now summarize many unpublished opinions and that the Tax Court should not ignore this reality.

A minority of the Committee, including all of the Judges on the Committee, believe that although all written opinions of the Tax Court should be available to the public, internet publication of opinions of the Tax Court designed as "unpublished" should be consistent with the practice of the civil divisions of the Superior Court. That practice is to publish on the internet those opinions designated for internet publication by the trial judge. This minority opinion is consistent with the recommendations set forth at page 50 of the recently released Report of the Supreme Court Committee on Public Access to Court Records.

B. Local Property Tax 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 addressed what it felt to be an increasing problem concerning the improper designation of filed local property tax cases as small claims in order to avoid the higher filing fee and the more formal discovery requirements associated with the filing of regular cases. At that time, small claims jurisdiction for local property tax cases was based upon the amount of tax in controversy, which could not exceed the sum of $2,000. However, given the interaction of factors such as value, ratios of assessment to true value, and tax rates, the tax amount at stake was frequently not readily ascertainable by the Tax Court Management Office, thereby making classification difficult at the time of intake. The Committee recommended that the jurisdictional determination for local property tax small claims cases be changed from a dollar amount to a jurisdiction based upon property classification.

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 Biennial Report pages 3-5, 10-17. The $2,000 limitation in non-local property tax cases remains.

Upon adoption of these 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 Presiding Judge and the Tax Court Administrator provided a report dated January 8, 2002 which set forth statistical evidence of two years which suggested that the

adoption of the new small claims jurisdiction rules were having their intended effect. Although the Committee concluded in its Biennial Report to the Supreme Court for the 2000-01 and the 2001-02 Court Years that it saw no need to further modify the small claims jurisdiction of the Tax Court, the Committee did note in Part V of that report that it would continue to monitor filing data in the small claims and regular divisions of the Tax Court in order to continue to review small claims jurisdiction.

The Committee considers full access to the Tax Court by all taxpayers to be a significant issue. The Committee has continued to monitor filing data, receive feedback from the Tax Court Management Office and actively solicit and receive feedback from Tax Court practitioners concerning small claims jurisdiction. At its various meetings, the Committee received input from the Small Claims Jurisdiction Subcommittee chaired by Presiding Judge Joseph C. Small and continued to review and discuss proposals to modify the small claims jurisdiction of the Tax Court . Although progress was made on this issue, no consensus has yet developed as to how best to implement a change in small claims jurisdiction. Accordingly, the Committee still considers small claims jurisdiction to be a carryover item and will continue to address this issue in its next biennial period.

PART IV — LEGISLATION

A. Legislation Supported.

At its various meetings, the Committee did not vote to support any legislative bills pending in the Senate and/or the Assembly.

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.2127—Limitation on Judiciary.

This bill proposes to amend N.J.S.A. 54:1-35(c)(6), 54:1-35.35 and 46:4-1(d) in order 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. Judges of the Tax Court are by statute required to have special qualifications, knowledge, and experience in matters of taxation. N.J.S.A. 2B:13A-6(b). To have a statute require that judges have an expertise which another statute restrains them from using does not merit further comment.

2. A.2122—Limiting Local Property Tax Appeals.

This bill proposes to amend N.J.S.A. 54:3-21 in order 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.

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. Property tax assessments of $750,000 or less must first be appealed to one of the twenty-one county tax boards from which a further appeal to the Tax Court may be taken.

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. County tax boards are often reluctant to tackle the complex and difficult issues presented by commercial tax appeals because of time limitations (all appeals must be heard and decided by June 30 of each year) and the fact that the county tax board commissioners only serve part time. Often commercial tax appeals are simply "affirmed without prejudice" thus (a) delaying the time at which the ultimate appeal is filed in the Tax Court and (b) requiring the taxpayer to expend an additional filing fee for a required proceeding with no substantive review. 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.

This legislative recommendation was originally made by the Committee in its Biennial Report for the 1998-99 and 1999-2000 Court Years and again made by the Committee in its three succeeding Biennial Reports. This legislative change was introduced as a bill in the Assembly in the year 2000. The legislation was never acted upon by the Legislature and has not been reintroduced. 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 chapter 208 of the Laws of 1999. 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. This legislative amendment has been proposed in prior Biennial Reports of the Committee. 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, purpose or interpretation of the statute as currently written. Consistent with that approach, the language utilized in the existing statutory framework was retained as much as possible. This legislative amendment has been proposed in prior Biennial Reports of the Committee. 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 feebleminded, 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 feebleminded, 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, is the same as the fee for 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 $200, 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. These legislative amendments have been proposed in prior Biennial Reports of the Committee. 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. Continued review and consideration of availability of unpublished opinions.

3. Continued review of small claims jurisdiction, as more specifically described in Part III B of this report.

Respectfully submitted,

/s/ Michael A. Guariglia
Michael A. Guariglia
Chairman

Dated: January 15, 2008

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

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Peter J. Zipp, Esq., Vice Chair

Hon. Joseph C. Small, P.J.T.C.
Hon. Michael A. Andrew, Jr., P.J.T.C. (Retired)
Hon. Vito L. Bianco, J.T.C.
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