

**TAX COURT OF NEW JERSEY
ANNUAL REPORT OF THE
PRESIDING JUDGE OF THE TAX COURT OF NEW JERSEY
FOR THE COURT YEAR ENDED JUNE 30, 1998.**

**In accordance with N.J.S.A. 2B:13-11, this report is submitted to the
Chief Justice of the Supreme Court of New Jersey and the
Administrative Director of the Courts.**

June 30, 1998 ended the Tax Court's nineteenth year. Filings in the Tax Court over these nineteen years have fluctuated from a low of 4,619 for the year ending June 30, 1987 to a high of 16,300 for the year ending June 30, 1992. This is attributable, in large measure, to the cyclical nature of the real estate market and values. Since June 30, 1992, however, with the exception of the year ending June 30, 1994, filings have decreased each year from the high of 16,300 to 7,124 for the current year ending June 30, 1998.

In the last annual report, it was noted that the Tax Court Management Office in combination with the Information Systems Division of the Administrative Office of the Courts implemented a technical conversion of the Tax Court's computer system from an inadequate DBASE 3, CLIPPER PC application to a SYBASE PC client-server application. During the course of this past year, a good deal of time has been allotted to making modifications to the new system with a view toward streamlining the application by arranging for such things as the reduction of processing time.

Inasmuch as the new system offers greater availability of current computer technology, the Tax Court is now especially interested in electronic filing. In this regard, the tax bar has been vocal in its support of an electronic filing pilot program for the Tax Court. Moreover, because of the specialized tax bar and its knowledge and use of computer technology, all who are familiar with the work of the Tax Court agree that the court would be an excellent candidate for an electronic filing and imaging pilot program. The filing deadline of April 1 of the tax year for direct appeals (appeals of property assessments in excess of \$750,000) in the Tax Court imposes a short period of time for filings and creates a great deal of paperwork that must be processed by the tax practitioner as well as the Tax Court in an abbreviated time frame. Electronic filing would eliminate the labor intensive work of paper movement and responses to litigants. Some of the benefits which can be anticipated from electronic filing would be immediate filing of complaints and other pleadings, almost immediate review and acceptance or rejection of filings, immediate access to new filings by judges and their staffs and improved customer service.

In order to accomplish such a pilot program, the Tax Court would need the assistance of the Information Systems Division to develop the electronic filing application and support its implementation once it is in production. It is strongly recommended that such a program be commenced in the next fiscal year.

In addition to electronic filing, the Tax Court, for many years, has attempted to shift as many nonjudicial functions as possible from the Tax Court judges to administrative staff personnel or case managers in order to permit the judges to take more time to hear and decide cases. With this concept in mind, the Supreme Court approved the implementation of a demonstration differentiated case management program for local property tax cases for properties situated in Bergen County beginning January 1, 1997.

To date, with the cooperation of the tax community, the experience of the Tax Court with differentiated case management has been quite positive. Sixty-five percent of the total filings for the 1997 tax year have been resolved which leads to the conclusion that cases are being resolved at an earlier time than in past years. Differentiated case management in the Tax Court

has demonstrated that it does improve the quality of case-processing with less judicial involvement in administrative functions. It has also provided trial date certainty and more timely case dispositions. To fully analyze the effectiveness of the pilot project, however, will require another six months of operation. It should be noted that the early success of the Bergen County experience has prompted discussion on expansion of the pilot program to another county.

THE COURT.

The Tax Court of New Jersey is a trial court with statewide jurisdiction. The court was established by the Legislature under Art. VI, § 1, ¶ 1 of the New Jersey Constitution, as a court of limited jurisdiction, to hear matters relating to state and local tax assessments. The enabling legislation can be found in N.J.S.A. 2B:13-1 to -15. The court reviews the actions and determinations of assessors and county boards of taxation with respect to local property tax matters and of all state officials with respect to state taxes.

In addition to hearing Tax Court cases, the judges of the Tax Court are, from time to time, assigned to hear Superior Court cases in which their special expertise can be utilized. In this court year, they heard and disposed of a number of Superior Court cases, many of which were tax-related cases.

Examples of the types of Superior Court cases which are appropriate for Tax Court judges to hear include: (1) actions in lieu of prerogative writs seeking review of the conduct of municipal officials relating to the administration of tax laws or the duties of tax assessors and tax collectors, (2) tenant tax rebate cases, (3) appointment of a receiver for nonpayment of real property taxes, (4) condemnation cases, (5) rent-leveling cases, (6) review of assessments for municipal improvements, (7) in rem tax foreclosure actions and (8) complex realty valuation issues in matrimonial cases.

The Tax Court was established by the Legislature to afford taxpayers a prompt and impartial hearing and disposition of their disputes with governmental taxing agencies by a qualified body of judges. The objectives of the Tax Court are to: (1) provide expeditious, convenient, equitable and effective judicial review of state and local tax assessments, (2) create a consistent, uniform body of tax law for the guidance of taxpayers and tax administrators in order to promote predictability in tax law and its application, (3) make decisions of the court readily available to taxpayers, tax administrators and tax professionals, and (4) promote the development of a qualified and informed state and local tax bar. During the nineteen years of its existence, the court has succeeded in achieving substantially all of these objectives.

CASELOAD.

At the beginning of the court year the Tax Court had an inventory of 11,633 tax cases. Tax Court cases filed during the court year totaled 7,124, aggregating a total case inventory of 18,757 cases. Dispositions totaled 9,390, resulting in an inventory of 9,367 cases by the end of the court year. (1) The Tax Court judges have cleared the court's calendar for the fourth consecutive year. This performance reflects the Tax Court's commitment to prompt disposition of tax cases and has been accomplished as a result of the dedication and hard work of the Tax Court judges, their staffs and the Tax Court Management Office.

Following is a comparison of filings and dispositions of Tax Court cases for the past nineteen years of the court's existence.

Year ended
Cases pending first day of period

Filings

Dispositions

Cases pending last day of period

8/31/80	26,000*	6,925	11,549	21,376
8/31/81	20,448*	8,343	15,564	13,227
8/31/82	13,227	6,376	12,288	7,315
8/31/83	7,311*	8,647	9,003	6,955
6/30/84	6,299**	8,633	9,004	5,928
6/30/85	5,928	6,523	8,012	4,439
6/30/86	4,439	5,310	6,312	3,437
6/30/87	3,437	4,619	4,687	3,369
6/30/88	3,369	4,764	5,629	2,504
6/30/89	2,532*	6,570	4,627	4,475
6/30/90	4,475	7,901	5,262	7,114
6/30/91	7,114	11,371	6,026	12,459
6/30/92	12,402*	16,300	9,224	19,478
6/30/93	19,478	14,967	16,560	17,885
6/30/94	17,885	15,223	11,697	21,411
6/30/95	21,411	12,741	17,402	16,750
6/30/96	16,750	9,410	12,075	14,085
6/30/97	14,085	7,954	10,406	11,633
6/30/98	11,633	7,124	9,390	9,367

* Adjusted to reflect year-end physical case inventory.

** Beginning July 1, 1983, the Judiciary changed its court year to end June 30, instead of August 31.

Following is an analysis of filings and dispositions for this court year. This is an analysis of Tax Court cases only and does not include Superior Court cases or miscellaneous tax applications.

A. Cases filed during the court year

Local property tax cases 95%

State tax and Equalization Table cases 5%

Over the last several years, local property tax cases have represented 89% to 99% of total filings and state tax cases 1% to 11% of total filings.

B. Cases filed by general category

1. Local property tax cases filed during the court year

Regular cases 61%

Small claims cases 39%

2. State tax and Equalization Table cases filed during the court year

State tax cases (other than homestead 55%

tax rebate and equalization table cases)

Homestead tax rebate cases 42%

Equalization Table cases 3%

In addition, during the court year Tax Court judges heard and decided a number of Superior Court cases.

Detailed Tax Court statistics can be found in the Appendix.

THE JUDGES.

At the beginning of the court year, Hon. Michael A. Andrew, Jr., P.J.T.C., Hon. Francine I. Axelrad, J.T.C., Hon. Maureen Dougherty, J.T.C., Hon. Roger M. Kahn, J.T.C., Hon. Harold A. Kuskin, J.T.C., Hon. Peter D. Pizzuto, J.T.C., Hon. Marvin N. Rimm, J.T.C. and Hon. Joseph C. Small, J.T.C. were assigned full-time to the Tax Court, while Hon. Angelo J. DiCamillo, J.T.C. and Hon. Raymond A. Hayser, J.T.C. were assigned full-time to the Superior Court.

During the course of the court year, Hon. Marie E. Lihotz, J.T.C. was appointed to the Tax Court and took her oath of office on August 15, 1997. Since the workload of the Tax Court at that time did not require an additional judge, Judge Lihotz was assigned full-time to the Superior Court, Gloucester County, Family Part.

On February 1, 1998, after eighteen years on the Tax Court bench, Hon. Marvin N. Rimm retired. Judge Rimm, however, consented to a temporary recall assignment, without compensation, on April 1, 1998. He was assigned to both the Superior Court, Chancery Division, General Equity Part, Atlantic/Cape May Vicinage and to the Tax Court to complete a number of cases that were in progress at the time of his retirement.

On May 1, 1998, Hon. Maureen Dougherty, J.T.C. resigned from the Tax Court to return to the private practice of law. As a consequence of Judge Rimm's retirement and Judge Dougherty's resignation, the number of judges assigned to the Tax Court on a full-time basis is six. With the existing caseload and the anticipated decrease in Tax Court filings for the current year, the court is able to maintain its operation on a current basis with the present six Tax Court judges.

The Tax Court maintains courtrooms and chambers for the judges assigned to the Tax Court in Hackensack, Newark, Morristown, Trenton, and Atlantic City. For the convenience of taxpayers, these judges also sit in court houses in Freehold, Toms River and Camden.

Each judge's courtroom staff is limited to a single court clerk who, in addition to normal courtroom duties, operates the sound-recording equipment. The use of a sound-recording system in the Tax Court has proven to be effective and cost efficient. It enables a travelling judge to move easily from one hearing location to another and facilitates the hearing of motions, settlements and other matters on the record by telephone. Experience has shown that sound-recording equipment has minimized the expenses of litigation and is convenient for attorneys. Moreover, it provides the means for a judge's review of court proceedings in the preparation of written opinions and permits the prompt preparation of transcripts for appeal purposes.

Work is continuing on the development of an individual computerized inventory system for each judge that would enable the judge and judge's staff to quickly learn the status of each open case using the data base furnished by the Management Office. This has been extremely helpful in the management and disposition of cases involving prior and subsequent tax years. The system will ultimately also provide each judge with an index of all published decisions of the Tax Court, as well as Supreme Court and Appellate Division decisions with respect to appeals of Tax Court decisions.

During the court year, the judges met monthly to discuss substantive and procedural developments in the tax field. In addition, the judges reviewed and considered opinions authored by Tax Court judges which had been submitted for publication in the New Jersey Tax Court Reports. These meetings, over the years, have proven to be very helpful to all of the Tax Court judges, but have been exceptionally helpful to judges newly appointed to the court.

In September 1997, four Tax Court judges joined tax judges from approximately twenty other states at the Seventeenth National Conference of State Tax Judges seminar in Minneapolis, Minnesota. The agenda for the conference provided numerous areas of mutual interest for tax judges which included the valuation problems inherent in contaminated properties, use of the internet by tax tribunals, taxation of electronic commerce, alternative dispute methodologies, current developments in state taxation and recent developments in local property tax cases. The cost of attending this conference was borne by the individual judges except for some expense reimbursement by the Lincoln Institute of Land Policy.

Many of the judges also participated in educational courses in property valuation and trial procedure. In addition, a number of the Tax Court judges were instructors for educational programs sponsored by the Institute for Continuing Legal Education, the New Jersey State Bar Association and Rutgers University.

THE TAX COURT MANAGEMENT OFFICE.

The Management Office is the administrative arm of the Tax Court. Its staff is responsible for the record keeping and case management functions necessary to move cases to disposition. Accordingly, the Management Office accepts papers for filing as well as monitors and schedules cases.

Under the able guidance of Doris A. DeBiasi, who has been the Tax Court Administrator since July 1, 1993, the Management Office is divided into two case-management teams. These

teams perform docketing, screening, data processing, calendaring, preparation of judgments, records management and administrative services. Each of the teams, at various stages in the litigation process, provide taxpayers, tax attorneys and tax administrators with information about the filing of complaints, opinions of the court, judgments and other information regarding the review of state and local property tax assessments. The staff of the Management Office also furnishes sample forms, court rules and pamphlets explaining Tax Court procedures in local property tax and state tax small claims cases.

During the course of the past court year the administrative staff of the Management Office has been developing a case processing standards manual. The purpose of the manual is to have available for each employee in the Management Office, in a computer format, each aspect of case processing from the receipt of mail to post-judgment tasks, so that each employee has a current work or task reference available at all times. This is still an on-going project inasmuch as all of the sections have not been completed and those that have are in draft form.

With respect to records management, the Management Office, in conjunction with the Superior Court Records Center, developed a procedure to microfilm Tax Court case files that have been

purged and have been at the records center since 1983. The Management Office further developed a quality check procedure to insure that the microfilm adequately preserves the recorded data before the files are destroyed. This procedure will eliminate a Tax Court file backlog at the Records Center and prevent any backlog from occurring in the future.

As previously indicated in this report, the Supreme Court approved a pilot program for differentiated case management for local property tax cases in Bergen County beginning January 1, 1997. It was anticipated that differentiated case management would enable the Tax Court to make better use of judicial resources by reserving judges' time for functions requiring a judge's effort. The management team responsible for Bergen County assumed much greater responsibilities for administrative case management activities with respect to the pilot program than had been the practice in the past.

To date, our experience with differentiated case management has been extremely positive. The case manager and members of the team performed many administrative tasks that heretofore were handled by the tax judge or a member of the judge's staff. Additionally, case processing has effectively improved even though there was less judicial involvement. The case disposition rate demonstrates that cases are being resolved in a more timely fashion because there is trial date certainty inherent in the differentiated case management system. As a consequence, the Management Office has prompted discussion on the question of whether differentiated case management should be extended to another county.

SUPREME COURT COMMITTEE ON THE TAX COURT.

The Supreme Court Committee on the Tax Court is composed of judges, members of the tax bar, tax administrators at the municipal, county and state levels, representatives of taxpayers' and tax professionals' organizations and others concerned with the administration and review of tax laws in New Jersey. During the past two court years, the committee held well-attended meetings to discuss issues related to the review of state and local tax assessments, including practice before the Tax Court, operation of the court, proposed rule amendments and legislation.

Three standing subcommittees were appointed by the Chair of the Committee at the first meeting of the 1996-1998 committee. One subcommittee explored the rules dealing with time limits for various procedures and motions in the court and proposed changes to certain rules. A second subcommittee explored pending legislation as well as legislation proposed by members of the tax community. The third subcommittee, denominated the Miscellaneous Rules Subcommittee, examined the rules employed by the court from the filing of a complaint to the disposition of a case to identify problem areas for consideration during the 1996-1998 committee term.

The committee's review of the Tax Court rules resulted in recommended changes in the rules with respect to the review jurisdiction of the Tax Court pursuant to R. 8:2(a), the allowance of the combination of tax appeals in one complaint only under certain circumstances for separately assessed condominium properties under R. 8:3-5(a)(4), additional requirements for amended pleadings under R. 8:3-8(a), adjusting the time for service of appraisal reports pursuant to R. 8:6-1(b), setting a time limit for motions made pursuant to N.J.S.A. 54:4-34 and increasing the filing fees reflected in R. 8:12.

The committee also drafted standard form interrogatories in local property tax farmland assessment and exemption cases and recommended their use by the Tax Court. In addition, the committee reviewed forms drafted to implement the rules for the Bergen County differentiated case management pilot project and recommended their use by the court. Last, the committee

suggested comprehensive legislative changes with respect to Tax Court practice and procedure. Those changes have been introduced in both the Senate and the Assembly.

Since no other such forum exists in the State of New Jersey, the Supreme Court Committee on the Tax Court affords a unique opportunity for taxpayers, those who represent taxpayers and those who administer and review tax laws to meet and discuss common problems and ways to improve the state and local tax system. These committee discussions have resulted in better understanding and coordination among the groups represented by the participants. The committee also provides a means of communication between the Supreme Court and the tax community.

STANDARDS OF ASSESSMENT AND LEGAL PRINCIPLES UTILIZED BY THE TAX COURT IN LOCAL PROPERTY TAX CASES.

Local property tax cases generally involve a determination of the value of property for assessment purposes. Value for assessing purposes is fair market value, that is, the price that would be paid by a willing purchaser for all of the rights in the real estate, and accepted by a willing seller, if neither were compelled to buy or sell. The fair market value standard is utilized to achieve the uniformity in assessment that is required by the "Tax Clause" of the New Jersey Constitution. The court applies the valuation principles required by statute and the Constitution and determines fair market value by application of such of the three approaches to value as may be presented in evidence and deemed appropriate by the court.

These three approaches are: (1) the sales comparison approach in which an estimate of market value is derived from the sales prices of comparable properties, (2) the cost approach which is founded on the proposition that an informed buyer would pay no more for a property than the cost of building a new improvement with the same utility as the subject plus the value of the land, and (3) the income approach which is predicated on the capitalization of the income the property is expected to generate.

Local property tax cases sometimes involve a claim of discrimination in assessment. In such cases the court follows the legal principles established by the Supreme Court in *In re Appeals of Kents 2124 Atlantic Ave., Inc.*, 34 N.J. 21 (1961), *Murnick v. Asbury Park*, 95 N.J. 452 (1984) and *West Milford Tp. v. Van Decker*, 120 N.J. 354 (1990), as well as statutory provisions granting relief from discrimination contained in N.J.S.A. 54:51A-6 (chapter 123 of the Laws of 1973).

Examples of the standards of assessment and legal principles utilized by the Tax Court during the court year ended June 30, 1998 may be found in the twenty-eight local property tax opinions approved for publication in *New Jersey Tax Court Reports* during the year. These opinions are representative of the tax cases heard during the court year.

The local property tax opinions deal with the valuation of a community shopping center, the applicability of the freeze act in N.J.S.A. 54:3-26 and :51A-8, the presumption of correctness, failure to comply with an assessor's request for income information, determination of fair market rent in an income approach, jurisdiction of the Tax Court to decide issues of sewer charges, the determination of what is nontaxable personalty under the Business Retention Act, highest and best use, collateral estoppel, effect of a bankruptcy proceeding on valuation, farmland assessment, tax exemption, interpretation of a Fox-Lance tax abatement agreement and use of entrepreneurial profit in a cost approach methodology.

Among the significant local property tax opinions issued during the court year were the following.

In *Cassini v. Orange*, 16 N.J. Tax 438 (Tax 1997), the court held that a tax assessor's chapter 91 (N.J.S.A. 54:4-34) requests dated September 22, 1995 which sought income and expense data

for the tax year ending December 31, 1995 to be used in determining 1996 tax assessments did not provide property owners with fair notice that they were to submit whatever data was available as of the date of receipt of the requests.

The property owners who received chapter 91 requests for which responses were either impossible because 1995 year-end data would not be available until the spring of 1996, or for which it was unclear what responses were being sought, may not have their tax appeals dismissed for failure to timely respond. Tax officials must speak in clear and unequivocal terms when the consequence of non-compliance is the loss of the right to appeal assessments.

Claremont Health Systems, Inc. v. Point Pleasant Bor., 16 N.J. Tax 604 (Tax 1997) held that the tenant of premises under a thirty-five year ground lease is not the "owner" of the property for the purposes of tax-exempt status, notwithstanding the fact that the lease was recorded as a document labeled "Deed." The document recorded by the Ocean County Clerk's Office contained all the terms of a ground lease.

In Deal Yeshiva, Inc. v. Deal Bor., 16 N.J. Tax 599 (Tax 1997), the court noted that plaintiff, a New Jersey religious corporation, owned two residential properties in Ocean Township and two in the Borough of Deal which were used as parsonages for the officiating clergymen of its synagogue located in Deal. Plaintiff received parsonage exemptions on the Ocean Township properties for the 1995 tax year. The court held that N.J.S.A. 54:4-3.6 clearly limits religious corporations to a maximum of two parsonage exemptions in the State, not two per municipality. Plaintiff was statutorily precluded from receiving exemptions for the Deal parsonages as a matter of law.

In Atlantic City v. Greate Bay Hotel and Casino, Inc., 16 N.J. Tax 486 (Tax 1997), the court held that where one party files a local property tax appeal with the county board of taxation, if the assessment of subject property exceeds \$750,000, timely election by a taxpayer or taxing district to invoke the jurisdiction of the Tax Court pursuant to N.J.S.A. 54:3-21 vests the court with jurisdiction over the matter and the county board appeal must be dismissed.

Livingston Mall Corp. v. Livingston Tp., 17 N.J. Tax 18 (Tax 1997) held that anchor tenants in a super-regional mall may not intervene, under R. 4:33-1, in a local property tax appeal filed by the landlord, when their lease agreements conferred on the landlord the exclusive right to appeal. The tenants did not reserve, in their leases, any right to appeal unless the landlord failed to prosecute with due diligence an appeal requested by the tenants, and did not reserve any right to participate in the landlord's appeal.

In NBCP Urban Renewal Partnership v. Newark, 17 N.J. Tax 59 (Tax 1997), the court held the parties to a Fox-Lance tax abatement agreement did not intend to be bound by subsequent changes to N.J.S.A. 54:4-1 by the Business Retention Act, L. 1992, c. 24.

The cost of turbines, arguably not taxable as real estate under N.J.S.A. 54:4-1 as amended by the Business Retention Act, was included in "total project cost" as defined in N.J.S.A. 40:55C-47 for purposes of calculating the annual service charge to be paid to the municipality in lieu of real property taxes under a Fox-Lance abatement agreement.

The City of Newark did not waive its objections to the audited total project cost calculation submitted by plaintiff and was not equitably estopped from rejecting plaintiff's audit report.

In B.F. Goodrich v. Oldman Tp., 17 N.J. Tax 114 (Tax 1997), the court utilized the reproduction cost approach to determine the value of each of the components of a manufacturing facility and a sales comparison approach to determine the land value of the subject site. Since there were no

market data presented to demonstrate that entrepreneurial profit should be included as an additional cost, it was not considered in valuing the subject property.

The court also held that pipe racks are expressly taxable under the Business Retention Act, L. 1992, c. 24, §3, N.J.S.A. 54:4-1. Based on the express language of the statute and the rules of grammatical construction, the qualifying phrase "up to the point of connections" was not intended to modify "pipe racks," rather it was intended to apply solely to the immediately preceding phrase "piping and electrical wiring."

Last, the court concluded that for purposes of the Business Retention Act, the latex manufacturing process starts inside the manufacturing building and the "point of connection" is the meter where the pipes merge and materials are introduced into the processing equipment. The piping and ancillary items which transport the chemicals and other raw materials from the storage tanks to the flow meter are taxable.

Brae v. Park Ridge Bor., N.J. Tax (Tax 1998) held that where no law or facts have changed since the 1989 tax year litigation determining the subject property's highest and best use as a corporate headquarters, the doctrine of collateral estoppel bars relitigation of the subject property's highest and best use in subsequent years.

The court also held that where highest and best use is a corporate headquarters, the cost approach is the only reliable valuation method. Where the taxpayer's use of the income and sales comparison approaches to value hinge on the use of comparable rentals and sales of general office buildings, the income and sales comparison approaches are unreliable valuation methods.

Bellemead Development Corp. v. Roseland Bor., 17 N.J. Tax 155 (Tax 1998) held that the fact that a seller of a property had filed a petition under the United States bankruptcy laws did not create a presumption or provide sufficient proof that a sale was not an arm's-length transaction.

The court also held that in a chapter 123 ratio challenge, the skewing of a ratio is not actionable unless it is based on the Director's utilization of incorrect information when he promulgated the chapter 123 ratio.

Hastings Plaza v. Washington Tp., 17 N.J. Tax 165 (Tax 1998) held that under N.J.S.A.

54:4-34 (chapter 91), a taxpayer must respond within 45 days to an assessor's request for income information. A substantively complete and adequate response received by the assessor on November 12 of the pre-tax year, but 24 days late, did not satisfy the requirements of the statute, and was insufficient to defeat the municipality's chapter 91 motion to dismiss plaintiff's complaint.

In *Edison Corporation v. Secaucus*, N.J. Tax (Tax 1998), the court held that the scope of a deposition noticed under R. 4:14-2(c) is not limited to the subject matter specified in the notice. A witness produced in response to the notice may be questioned as to any matter permitted by R. 4:10-2(a).

The court also held that where a parent corporation and its wholly-owned subsidiary have a community of interest in the subject matter of a lawsuit, the lawyer-client privilege applies to a communication between the lawyer for the subsidiary and an employee of the parent.

In *Roman Catholic Archdiocese of Newark v. East Orange*, N.J. Tax (Tax 1998), the court concluded that for the tax years in question, the level of religious activity at the former parish-

owned church properties was substantially less than it had been prior to a takeover by the Archdiocese. However, the court held that the use of the properties to celebrate weekly Masses and the storage of religious artifacts and records was sufficient to sustain a property tax exemption under N.J.S.A. 54:4-3.6. The court also concluded that property leased to the East Orange Board of Education by the Archdiocese was not exempt from taxation under N.J.S.A. 54:4-3.6.

In *Schnitzer v. Rinderer*, 17 N.J. Tax 136 (Tax 1998), the court held that N.J.S.A.

54:5-79, as amended, continues the life of a tax sale certificate beyond twenty years provided the lienholder continues to pay the property taxes. A property owner may not terminate the interest of a lienholder by merely commencing payment of the taxes. If a property owner seeks redemption, the tax collector must diligently follow the proper redemption procedures and afford the lienholder the opportunity to file an affidavit stating the amount owed. The tax collector's failure to do so nullifies the certificate of redemption issued by the tax collector.

STATE TAX AND EQUALIZATION TABLE CASES.

State tax cases decided during the court year include those dealing with the sales and use tax, gross income tax and the corporation business tax. Among the published state tax opinions and the equalization table opinions the following were the most significant.

In *Sharps, Pixley, Inc. v. Director, Div. of Taxation*, 16 N.J. Tax 626 (Tax 1997), the court held that a letter from the Internal Revenue Service (IRS), stating that the joint committee on taxation took no exception to the conclusions of the IRS with regard to the income tax adjustments for the tax years under review, constituted a final determination by the IRS that triggered the taxpayer's requirement to file a notice of federal changes with the New

Jersey Division of Taxation within 90 days.

The court concluded that N.J.A.C. 18:7-13.8(d), requiring corporate taxpayers to file a notice of federal changes within 90 days of the final determination of those changes by the IRS as a precondition to filing a claim for refund in New Jersey following expiration of a two-year refund statute of limitations period, is a valid regulatory exercise by the Director of the Division of Taxation.

The court also held that the taxpayer was entitled to setoff a time-barred, non-refundable 1980 corporation business tax overpayment against a 1978 corporation business tax liability under N.J.S.A. 54:49-16b. Although each year was part of a separate federal audit, they were within the same assessment period.

Marrinan v. Director, Div. of Taxation, 17 N.J. Tax 47 (Tax 1997) held that net loss carryovers may not be deducted in calculating net profits from a business under N.J.S.A. 54A:5-2. Only losses occurring during the same taxable year may be deducted.

The court also held that the erroneous issuance of a refund check, based on a tax return containing the deduction of a net loss carryover, does not equitably estop the Director from disallowing such a deduction.

Last, the court concluded that plaintiffs' failure to brief an issue raised by them, and included in the pretrial order, constituted a waiver of the issue.

Adamar of New Jersey v. Director, Div. of Taxation, 17 N.J. Tax 80 (Tax 1997) held that purchases by hotels of amenities such as shampoo, ballpoint pens, writing pads and shoeshine

cloths that are provided to hotel guests without separate charge, are not purchases for the purpose of resale under N.J.S.A. 54:32B-2(e)(1)(A) and are subject to New Jersey sales and use taxes.

In similar fashion, in *Boardwalk Regency Corp. v. Director, Div. of Taxation*, N.J. Tax (Tax 1998), the court held that the purchase of nonalcoholic carbonated beverages under sale-for-resale certificates does not constitute a sale-for-resale for purposes of N.J.S.A. 54:32B-2(e)(1)(A) when the beverages are subsequently given to casino patrons on a complimentary basis because the patron's gambling is not legally sufficient consideration. The court also held that the Director of the Division of Taxation is precluded from entering into closing agreements that are disadvantageous to the State, and N.J.S.A. 54:31-1 does not authorize the Director to enter into an agreement that governs the future tax liability of a taxpayer for an indeterminate period of time.

Tischler v. Director, Div. of Taxation, N.J. Tax (Tax 1998) held that fire insurance proceeds are income from an involuntary disposition of property if they exceed the property's basis in the tax year in which the proceeds are received and if the proceeds are not used to replace or repair the destroyed property.

Additionally, a taxpayer may not assert equitable estoppel based on statements of employees of the Division of Taxation concerning the taxability of insurance proceeds to prevent the Division from assessing gross income taxes. The taxpayer's bill of rights, N.J.S.A. 54:49-11(b), protects taxpayers in the event of their reliance on erroneous advice furnished in writing by an employee of the Division. When the advice is provided orally and not in writing, however, the Division properly may assess interest on an outstanding tax liability.

In *Northvale Bor. v. Director, Div. of Taxation*, N.J. Tax (Tax 1998), the court upheld the Director's exclusion of a sale from his calculation of an assessment ratio where the assessment of the property sold was found to have been established as part of a settlement of a previous year's tax appeal. The court accepted as reasonable the Director's exclusion of sales where assessments were considered to be reflective of the general assessment practices that the assessment ratio is designed to measure.

APPEALS FROM TAX COURT DECISIONS.

A. SUPREME COURT OF NEW JERSEY.

During the court year, the Supreme Court was presented with thirteen Tax Court cases. The Court denied certification in nine cases, granted certification in one case, denied leave to appeal in two cases and in the thirteenth case granted a motion for leave to appeal and summarily remanded the matter to the Appellate Division. The Supreme Court rendered a decision in one Tax Court case, *General Motors Corp. v. Linden*, 150 N.J. 522 (1997).

In *General Motors Corp. v. Linden*, the Court was called upon to decide whether N.J.S.A. 54:4-1(b), a part of the Business Retention Act defining personal property taxable for local property tax purposes, was facially unconstitutional because it conflicted with the uniformity provision of Article VII, § 1, ¶ 1 of the New Jersey Constitution.

The Court held that the statute was facially constitutional because it could reasonably be interpreted as not creating an unconstitutional exemption for real property from taxation that would favor business or industry. It was instead, in the Court's view, an effort to provide refinements in the definitions of real and personal property for the purpose of determining whether certain forms of property are subject to local property taxation.

Pending consideration in the Supreme Court, at the present time, is the matter of Koch v. Director, Division of Taxation, 15 N.J. Tax 387 (Tax 1995), aff'd, N.J. Tax (App. Div. 1997). The Tax Court held that plaintiff's share of partnership debt, released at the time of the sale of plaintiff's interest in the partnership, was includable in the amount realized in connection with the sale and was not income from the discharge of indebtedness. Additionally, the Tax Court held that the tax benefit rule would not be applied under the New Jersey Gross Income Tax Act, and consequently, plaintiff's basis in his partnership interest at the time of the sale would be unaffected by his inability under New Jersey tax law to net intercategory gains and losses.

Last, the Tax Court concluded that income attributable to the sale of plaintiff's partnership interest constituted a net gain or income from the disposition of property within the purview of N.J.S.A. 54A:5-1(c), and the fact that a portion of such income could have been characterized as depreciation recapture for federal tax purposes was deemed irrelevant.

The Appellate Division affirmed the judgment of the Tax Court substantially for the reasons stated in the Tax Court's published opinion.

B. APPELLATE DIVISION OF THE SUPERIOR COURT.

During the court year, appeals were filed with the Appellate Division of the Superior Court from 71 Tax Court decisions. The number of Tax Court cases appealed to the Appellate Division over the past nineteen years is:

1979-1980	11
1980-1981	53
1981-1982	92
1982-1983	84
1983-1984	56
1984-1985	65
1985-1986	51
1986-1987	49
1987-1988	48
1988-1989	44
1989-1990	32
1990-1991	40
1991-1992	49
1992-1993	43
1993-1994	67
1994-1995	84
1995-1996	79
1996-1997	53
1997-1998	71

During the court year, decisions were rendered by the Appellate Division in 68 Tax Court cases. The Appellate Division took the following action:

Affirmed	35
Dismissed	14
Reversed & Remanded	6
Reversed	4
Motion for leave to appeal granted	3

Motion for leave to appeal denied 5
Reinstatements 1
Total Dispositions 68

PUBLICATION OF TAX COURT OPINIONS.

A key objective of the court is to make Tax Court decisions available to taxpayers, the tax bar, tax administrators and other tax professionals. Ready access to these opinions assists in tax planning, tax administration and tax enforcement by improving predictability. Summaries of opinions approved for publication are published in the New Jersey Law Journal and the New Jersey Lawyer. "Slip" opinions are produced and made available by the Tax Court Management Office. West Publishing Company publishes the opinions in New Jersey Tax Court Reports and issues advance sheets prior to publication of these reports.

Volume 16 of the New Jersey Tax Court Reports was published in January 1998. Volume 17 will be issued in the 1998-1999 court term. New Jersey Tax Court Reports contain state and local tax opinions, as well as Appellate Division opinions which decide appeals from Tax Court decisions and are not published in the Superior Court Reports. The Appellate Division decisions are, therefore, published in the New Jersey Tax Court Reports to complete the record.

In addition to the publication of Tax Court opinions in New Jersey Tax Court Reports, Tax Court opinions are available on the Internet home pages of the state Judiciary and the Rutgers-Camden Law School internet site. These opinions can be accessed at www-camlaw.rutgers.edu or www.state.nj.us/judiciary and can be read online or downloaded in a word-processing format. At present, users have to search for opinions by means of the names of cases, key words or phrases. It is anticipated, however, that eventually opinions will be grouped and made available by court and date of release.

RECOMMENDATIONS FOR LEGISLATIVE CHANGES.

Based on the cases heard by the court, it appears that the system for review of state and local tax disputes is generally functioning satisfactorily. The court's experience with taxpayers, tax attorneys and tax administrators, however, has demonstrated that the state and local tax system can be improved with certain legislative changes.

Recommendations for legislative changes have been made by the Supreme Court Committee on the Tax Court in its biennial report for the 1996-1997 and 1997-1998 court years. These recommendations have been incorporated in proposed legislation that was approved in the Senate on June 22, 1998 in Senate Bill 673 (1998-1999). That bill was received in the Assembly and has been referred to the Assembly Judiciary Committee. The recommended legislative changes in Senate Bill 673 include the following:

1. Permit added or omitted assessments exceeding \$750,000 to be appealed directly to the Tax Court, as are regular assessments.
2. Provide for uniform procedure with respect to the requirement for payment of taxes as a prerequisite to maintaining an appeal of an assessment.

3. Provide for extension of time for appeal when notice of the local property tax assessment is not timely delivered to the taxpayer.
4. Amend N.J.S.A. 54:3-26 and 54:51A-8 (freeze act) to make it clear that the freeze act applies to a judgment only when the time for all appeals from the county tax board or Tax Court judgment has expired.
5. Amend N.J.S.A. 54:3-26 and 54:51A-8 (freeze act) to make it clear that the binding effect of the freeze act terminates with the tax year immediately preceding the year in which a complete reassessment of all real property within a municipality has been implemented.
6. Provide for additional exceptions to the binding effect of the freeze act.
7. Amend N.J.S.A. 54:4-49(a) to include the words "regional and" to the first sentence following "for purposes of" and preceding "consolidated school districts." It appears these two words were unintentionally deleted when the Public School Education Act of 1975, N.J.S.A. 54:4-49(a), was enacted in 1975.
8. Amend N.J.S.A. 54:4-3.3e, Dispute as to apportionment or payment of taxes: jurisdiction of Superior Court: determination: order, to substitute the Tax Court for the Superior Court in the title and text of this statute.
9. Amend N.J.S.A. 54:51A-2. The last sentence, which refers to listing a case for trial "on or after April 1 next following the filing of the complaint" is now inconsistent and unnecessary. It should be deleted.
10. Amend N.J.S.A. 54:51A-9b to change the filing deadline for direct appeals to the Tax Court from August 15 to April 1.

I join the Supreme Court Committee on the Tax Court in supporting these legislative changes.

CONCLUSION.

During the past nineteen years, the overall mission of the Tax Court, to provide prompt and impartial hearings and dispositions of tax disputes, has remained steadfast and unyielding. The Tax Court judges, the Tax Court Administrator and their staffs have worked diligently throughout this past year to accomplish the work of the court. Their efforts have been efficient and of very high quality. I am satisfied that the public has been well served. Moreover, the work of the court has substantially assisted in the administration of the tax laws of the State and aided taxpayers, tax practitioners and tax administrators by contributing to the development of a consistent body of tax law for their guidance.

Michael A. Andrew, Jr.
Presiding Judge of the
Tax Court of New Jersey

Dated: August 7, 1998

1. These figures do not include miscellaneous tax applications and Superior Court cases assigned to Tax Court judges.