

TAX COURT OF NEW JERSEY



ANNUAL REPORT OF THE PRESIDING JUDGE OF THE TAX COURT OF NEW JERSEY JULY 1, 2007 - JUNE 30, 2008

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This report is submitted to the Chief Justice of the Supreme Court of New Jersey pursuant to N.J.S.A. 2B:13-11. This annual report covers the period July 1, 2007 through June 30, 2008. The last annual report of the Presiding Judge of the Tax Court covered the period July 1, 2006 to June 30, 2007.

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I.

INTRODUCTION & HIGHLIGHTS

In the 2007-2008 court year there were 11,681 filings in the Tax Court of New Jersey, more cases than filed in any year since the court year ended June 30, 1995. Dispositions totaled 8,749 cases, more dispositions than in any year since the court year ended June 30, 1998. Total dispositions per year have increased by 2,030 cases or 30% since the court year ended June 30, 2005. Although productivity per judge per year decreased slightly from last year, it is still well over six cases per judge per working day. The addition of a new judge in the middle of the year diluted the overall productivity of the previously appointed judges. The inventory of cases continues to grow, in part, because of the over two years it took to fill the vacancy created with the retirement of Judge Kahn on June 30, 2005, and in part due to the 9% increase in filings from the prior year. The inventory of 18,607 cases at the end of the 2008 court year has grown by 10,554 or approximately 131% since the court year ended June 30, 2001, and over 19% (3,011 cases) since the end of last year. Filings are expected to increase in the court year 2008-2009. Thus, despite the strong efforts of the Judges of the Tax Court, their chambers' staff, and the staff of the Tax Court Management Office resulting in substantially increased productivity over the last few years, it is unlikely that the inventory of unresolved cases can do anything but increase until additional judges are appointed or assigned to the Tax Court and/or more efficient case processing methods are introduced.

The Judges of the Court are aging. Five of the seven sitting judges are over 60 years old. One of the judges must retire in this court year. Two others are currently eligible to retire with a full pension. Two of the remaining four judges may well retire within two years. It is imperative that new judges be appointed to (a) deal with the increasing caseload

and (b) assure litigants that the judges who will replace the retiring judges are trained and have some experience on the Tax Court before the court loses all of its senior experienced judges. Despite the technical advances that allow for more automated case processing, the Tax Court has not been able to secure the commitment of information technology resources to design and implement these available efficiencies.

II.

THE COURT

The Tax Court was originally established on July 1, 1979 as a trial court with statewide jurisdiction to review state tax and local property tax assessments. Over the past twenty-nine years the court has disposed of over 250,000 cases by deciding disputes between taxpayers and New Jersey governments, and clarifying the law for those who might be in doubt. By publishing over 1,100 of its opinions the court has enabled those with disputes to avoid unnecessary litigation. New issues arise as laws are amended, taxpayers change the way they do business, and the taxing jurisdictions develop new methods and theories to maintain the flow of tax revenue necessary to support government. Thus, the court continues to play a vital role in the ever changing tax administration, tax policy, and tax law of this state. Judges of the Tax Court also hear Superior Court cases. The special expertise of its judges has helped resolve complex issues relating to valuation of assets and business relations.

In the period since the last annual report of June 30, 2007, the Tax Court has continued to hear and dispose of tax controversies by facilitating settlements and rendering opinions and decisions in the cases filed with the court. A review of the statistics in the Appendix and discussed briefly in this section and the section captioned “Caseload” reveals

an increase in filings and growth in inventory resulting from the decline in the value of commercial and residential property.¹

During the 2007-2008 court year the judges assigned to the Tax Court were Presiding Judge Joseph C. Small and Judges Vito L. Bianco, Raymond A. Hayser, Harold A. Kuskin, Gail L. Menyuk and Peter D. Pizzuto. Judge Patrick DeAlmeida was appointed to the Tax Court in January 2008, filling the vacancy created by the retirement of Judge Roger M. Kahn on June 30, 2005. The Judges maintain chambers and hear cases in Hackensack, Newark, Morristown, and Trenton. In general, each Judge is designated to hear cases from specific counties and municipalities. Cases are then assigned according to the location of the property that's assessment is being challenged. This year there were 11,681 filings, more than in any year since 1995. With six and, after January 2008, seven judges, the court was able to dispose of 8,749 cases this past year, more than in any year since 1998. Our standard is to have each judge dispose of between 1,000 and 1,200 cases per year. In the past year each judge averaged about 1,350 dispositions (approximately six cases for each working day). See pages 14 to 15 and Appendix page 1b (Table 3) for the productivity of the judges for the past twelve years.

Anticipated increased filings due to a continued decline in the commercial and residential market, and a number of substantial municipal revaluations, leads me to anticipate a continued modest increase in our inventory of cases. Absent the addition of judges assigned to this court and/or the implementation of more efficient case processing systems, the inventory with predicted increased filings cannot avoid growth. Since five of

1. The bulk of the court's cases (in excess of 90%) are disputes relating to local property tax assessments. The major issue addressed in these cases is the amount of the assessment, which is based on the market value of the property. Because tax assessments tend to lag behind the market, when real property market values increase, taxpayer appeals decrease; when market values decline appeals increase. Also, because of the way in which the statutes regarding assessments are structured, if residential property values increase (as was happening in the period up to court year 2007-2008) more rapidly than general property values and municipalities do not reassess their properties or conduct a revaluation, the assessments of commercial properties must be reduced and that is accomplished by the filing of a tax appeal. N.J.S.A. 54:51A-6 and L. 1973 c. 123 (Chapter 123).

the seven judges assigned to the Tax Court are over 60 years old and each of those five of the seven judges may or must retire within three years, it is essential that new judges be appointed to the court so that when the older judges leave there is a cadre of experienced judges remaining.

Of the twelve authorized Tax Court Judges, three have been temporarily assigned to the Superior Court Trial Division and two to the Appellate Division. Each of the three trial judges has established himself in his current assignment and prefers to remain assigned to the Superior Court. Accordingly, I would urge the Governor and Legislature to consider appointing any or all of these five highly qualified judges to the Superior Court so that there will be one or more vacancies on the Tax Court to be filled by qualified and experienced individuals. An alternative would be for the Chief Justice to temporarily assign a qualified Superior Court Judge or Judges to the Tax Court when and if the need becomes acute.

For the 2007-2008 court year Differentiated Case Management (DCM) (a system of uniform and efficient case management with objectives similar to those of best practices in the Superior Court) continued as a pilot program. All complaints filed are now subject to the new DCM rules and procedures. Prior to January 1, 2005, this uniform system of case management was in operation for local property tax cases in Bergen and Hudson counties for eight and three years, respectively. Since this past year was only the second full year that DCM had been implemented statewide, policies and procedures still needed to be evaluated. During this court year the DCM program continued to improve the efficiency of the Tax Court, resulting in earlier case disposition, greater uniformity of procedures among the judges, and a reduction in the judges' current administrative (non-adjudicative) functions. The 2006-2008 Supreme Court Committee on the Tax Court therefore recommended 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 of the Court Rules. The Supreme Court approved this recommendation which became effective on September 1, 2008.

The following Table 1 categorizes filings and dispositions for the court year covered in this report. The analysis represents Tax Court cases only and does not include Superior Court cases or miscellaneous tax applications handled by the judges of the Tax Court. An examination of the table shows that the vast majority of the court's cases involve local property tax. Of those, the overwhelming number of cases relate to non-residential property. The small claims category is defined by Court Rule as one to four family houses. Most disputes relating to those properties are adequately resolved at the twenty-one County Boards of Taxation. Although the non-property tax cases are a relatively small percentage of the court's volume of work, their relative complexity makes them less susceptible to settlement and requires judicial time out of proportion to their numbers.

TABLE 1
TAX COURT OF NEW JERSEY
CATEGORIES OF CASES FILED
COURT YEAR 2007-2008

A. Cases filed by general category		
Local property tax cases	95%	(11,126 cases)
State tax and Equalization Table cases	5%	(555 cases)
Total	100%	(11,681 cases)
B. Local property tax cases filed during the court year		
Regular cases	81%	(8,998 cases)
Small claims cases (Residential/1 - 4 family homes)	19%	(2,128 cases)
Total	100%	(11,126 cases)
C. State tax and Equalization Table cases filed during the court year		
State tax cases (other than Homestead Rebate & related cases)	34%	(187 cases)
Homestead rebate & related cases	65%	(363 cases)
Equalization Table cases	1%	(5 cases)
Total	100%	(555 cases)

More detailed Tax Court statistics for the 2007-2008 court year can be found in the Appendix.

III.

THE TAX COURT MANAGEMENT OFFICE

The Tax Court Management Office is the administrative arm of the Tax Court. Cheryl A. Ryan has been the Clerk/Administrator since her appointment on October 1, 2005. This office provides the support services necessary for the efficient functioning of the court. Not only is the office responsible for case flow management, record keeping and case management functions necessary to move cases to disposition, it also manages the resources needed to support the Tax Court Judges and support staff in four separate locations. Specifically, the Management Office accepts papers for filing, assigns cases, prepares calendars and judgments, responds to attorney and litigant inquiries and provides procedural guidance.

The office is comprised of three case management teams that are responsible for docketing, screening, data processing, calendaring, records management and administrative services. Each team at various stages in the litigation process provides 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 cases.

Historically, the Supreme Court of New Jersey approved a pilot program for DCM for local property tax cases in Bergen County beginning January 1, 1997. The program was expanded to Hudson County for local property tax cases beginning January 1, 2000. These pilot programs anticipated that DCM would enable the Tax Court to make better use of judicial resources by reserving the judges' time for functions requiring their expertise and

allowing more administrative functions to be handled by personnel other than judges.

Our experience with DCM in Bergen and Hudson Counties was extremely positive. The case management teams performed many administrative tasks that were previously handled by the judges or their staff. Additionally, case processing improved and judges were relieved of some of the administrative burdens associated with case management.

Since the Supreme Court of New Jersey's approval of the statewide implementation of the DCM pilot program in January 2005, the Tax Court has been diligent in implementing the new rules and evaluating policies and procedures for improved efficiency. With the adoption of the amended Rules of the Tax Court that were effective September 1, 2008, it is anticipated that DCM will continue to improve efficiency and consistency in case management and disposition.

The Tax Court Management Office continues to make significant improvements to its automated case management system, especially with respect to the court's statistical reporting abilities and management of DCM cases. The enhancements have enabled the court to perform more meaningful analyses of filings, dispositions, caseload assignments, and time frames that ultimately will aid the court in its ability to meet the demands of litigants. Training and encouraging chambers' staff to fully utilize the system has also facilitated calendar management.

It is hoped that as case filings increase, the court will be provided with greater support from the information technology resources of the Administrative Office of the Courts so that we can implement, for example, e-filing and more automated case processing. That will free the management office staff from much of its routine clerical work so that they can (a) be more helpful to litigants and (b) process more cases per management office employee (FTE). Currently, the caseload per Tax Court FTE (full time equivalent) is higher

than the staffing models established for the Superior Court's Law Division cases, Landlord-Tenant cases and Small Claims cases.² Additionally, the intensity of case management by the Tax Court case managers is greater than the management of the cases in the Superior Court in part because of DCM and because the vast majority of Tax Court judgments are entered in Trenton and a copy of each judgment must be sent to five locations (two attorneys, the assessor, the county board of taxation, and the tax collector).

In addition to making Tax Court opinions available through the Rutgers-Camden Law School internet site, Tax Court opinions are also available through the State Judiciary and Tax Court websites. This provides opinions to the public as soon as they are published.

Newly added this year to the Tax Court website is a continually updated list of complaints docketed throughout the calendar year. Other reports and information available on the Tax Court website include: all state and local property Tax Court forms, the Rules of the Tax Court, a small claims handbook, the Tax Court's standard form interrogatories, as well as the Annual Reports of the Presiding Judge and the Biennial Reports of the Supreme Court Committee on the Tax Court. Links to access the state's twenty-one county boards of taxation are also available on-line. It is anticipated that the website will continue to expand to include Tax Court judgment data with a docket number search feature.

2. The 12-member Tax Court case management staff currently has on average 1,550 cases per FTE to manage and 930 new filings per FTE to docket annually. Directive # 8-06 dated May 26, 2006 indicates a Superior Court, Civil Division staffing model of one FTE for every 300 Law Division cases, one FTE for every 1,500 landlord-tenant cases and one FTE for every 1,100 small claims cases.

IV.

CASELOAD

A.

FILINGS AND DISPOSITIONS

Table 2 in the Appendix (page 1a) summarizes the twenty-nine year history of filings and dispositions of Tax Court cases. At the beginning of the 2008 court year, the Tax Court had an inventory of 15,596 cases. Tax Court cases filed during the court year totaled 11,681 and 79 previously closed cases were reinstated. Thus, the aggregate total number of cases in inventory was 27,356. Dispositions for the court year totaled 8,749 cases, resulting in an inventory of 18,607 cases at the end of the court year.³ Due to several years of increased filings, the Tax Court Judges were not able to clear the calendar. However, the court accomplished much by resolving 56% of the caseload pending at the beginning of the year and by issuing opinions in several notable cases (see page 18, “Standards of Assessment and Legal Principles Utilized by the Tax Court.”) The total current inventory constitutes slightly more than two years of dispositions at the current rate of dispositions. That is consistent with our objective of closing standard cases within eighteen months to two years after filing. At the current time, approximately 16% of the court’s caseload is more than two years old. That is accounted for by the number of complex cases and the fact that a judicial vacancy which had existed for over two years was only filled in the middle of the 2007-2008 court year. If that vacancy had been filled and the judge occupying it were closing cases at the same rate as our current judges we would have cleared 90% of our calendar and have fewer older cases on the docket. Although the “backlog” of the Tax Court (cases over two years old) is approximately 16% of our court caseload compared to the 11% of the Superior Court

3. The figures do not include miscellaneous tax applications and Superior Court cases assigned to Tax Court Judges.

discussed in Judge Carchman's budget testimony on April 30, 2008, we find this an acceptable, although not desired, number. The difference is in part accounted for by the seasonality of tax court filings and what we hope is a temporary shortage of judges – remedied in part by the January 2008 appointment of Judge DeAlmeida.

The section of this report captioned “The Court” (page 4) explains the reasons for the increasing inventory: (1) a decline in commercial and residential property values; (2) the implementation of revaluations in a number of large municipalities that have not had revaluations for a very long time; (3) an increase in the number of tax appeals due to items (1) and (2); (4) a declining number of judges relative to the number of filings assigned to hear tax cases and (5) the inability of the Tax Court to secure sufficient information technology resources to design and implement a more modern case processing system. Two of these factors are within control of the judiciary. Adding judges and modernizing/automating case processing systems. As prior sections of this report have indicated, we have introduced more efficient case management procedures (DCM) which have enabled each judge to be more productive and in part, compensate for the increased filings per judge. That productivity can be further enhanced with the introduction of more automated case management systems. Additionally, a cadre of experienced judges needs to be developed to step into the shoes of the judges who will retire within the next few months and years.

B.

PRODUCTIVITY

Table 3 in the Appendix (page 1b) indicates the number of dispositions per Tax Court Judge per year for the past twelve years. The column captioned “# of judges” needs some explanation. Over the history of the court, judges have been appointed, retired, and resigned at times other than the beginning and end of a court year. When the real estate market was robust (approximately 1986-1990) the number of court filings declined and some of the Tax Court Judges were assigned almost full-time to hear Superior Court cases. For several years before his retirement, Judge Evers was ill and did not hear any cases. After their retirement, Judges Lasser and Lario were on recall and carried almost a full load of cases. Thus, the final column, “dispositions per Judge,” is less than perfectly accurate.

In the first three years of this court’s existence (when it was disposing of a large number of cases backlogged from the old Division of Tax Appeals) and the years ending June 30, 1993 and June 30, 1995 (when the previous years’ filings had reached all time highs), productivity per judge was very high. Dispositions per judge in the past three court years (2005-2006, 2006-2007 and 2007-2008) are greater than they have been in any of the past twelve years. Since Judge Kahn’s retirement in 2005, filings have also increased. The increase in the number of total dispositions, as well as dispositions per judge reflects the significant efforts of the judges and the staff to respond to both the decline in the number of judges and the increase in filings. Nevertheless, despite disposing of cases at near record rates, the seven judges currently sitting in the Tax Court can neither keep up with the increased filings nor reduce the number of unresolved cases.

It should be noted that dispositions per judge per year is not the sole measure of the

quantity and quality of this court's work. Only a small portion of our detailed written and oral opinions are reported in Volumes 1 to 24 of the *New Jersey Tax Court Reports*. The statistics support my requests, pleas, and cries for the appointment of new judges and greater information technology support.

C.

APPEALS FROM TAX COURT DECISIONS

1. SUPREME COURT OF NEW JERSEY

During the 2007-2008 court year, the Supreme Court denied certification in one case and granted certification in one case. The court rendered an opinion in one Tax Court matter.

Robert Oberhand v. Director, Division of Taxation
193 N.J. 558 (2008)

In reversing the Appellate Division and adopting the reasoning of the Tax Court, a divided Supreme Court held that the doctrine of manifest injustice applied to an amendment to New Jersey's estate tax law to void the amendment's retroactive application to an estate where the will was drawn and the decedent died prior to enactment of the statute.

Immediately after the close of the 2007-2008 court year, the Supreme Court decided two other tax cases.

Hunterdon Medical Center v. Readington
195 N.J. 549 (2008) - July 14, 2008

The court accepted, with minor modifications, the Tax Court's interpretation of the law regarding local property tax exemption for various subsidiary facilities of a hospital and remanded the matter for application of those standards to the facts in this case.

McMahon v. City of Newark
195 N.J. 526 - July 17, 2008

The Supreme Court reversed the Tax Court's dismissal of the action and held that the matter should be remanded to the Superior Court because despite the Superior Court's prior transfer of the matter to the Tax Court, the parties' agreement to confer jurisdiction on the Superior Court was binding on the parties and the courts.

2. APPELLATE DIVISION OF THE SUPERIOR COURT

During the 2007-2008 court year, appeals from 46 Tax Court decisions were filed with the Appellate Division of the Superior Court. Table 4 (page 1c) provides the number of Tax Court cases appealed to the Appellate Division over the past twenty-nine years. Table 5 (page 1d) shows the disposition of Tax Court cases by the Appellate Division during the 2007-2008 court year.

V.

STANDARDS OF ASSESSMENT AND LEGAL
PRINCIPLES UTILIZED BY THE TAX COURT

A.

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 buyer 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. See N.J. Const., art. VIII, §1, ¶1(a). The court applies the valuation principles required by statute and the Constitution and determines fair market value by application of one or more 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 our 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).

Opinions are reported in New Jersey Tax Court Reports. As of the date of this report, there are 23 complete volumes and recent opinions are being published in Volume 24. Only three local property tax cases were decided by formal published opinion during this court year (most cases dealing with the value of real estate can be disposed of by less formal letter or oral bench opinions):

CASES

Society of Holy Child Jesus v. Summit
23 N.J. Tax 528 (Tax 2007)

A taxpayer is not entitled to a property tax exemption if the “exempt use” of the property violates the municipality’s zoning ordinances.

City of Atlantic City v. Director, Division of Taxation
24 N.J. Tax 1 (Tax 2008)
Appeal pending – Docket No. A-3495-07T1

The court cannot hear individual challenges to a municipal chapter 123 ratio except in the context of a challenge to the school aid ratio or a specific tax appeal. Sales of properties to further an assemblage of properties or as part of a multi-parcel transaction are not individual market sales.

BASF Corp. Coating and Ink Division v. Belvidere Town
23 N.J. Tax 551 (Tax 2007)
Appeals pending – Docket Nos. A-3483-07T1, A3484-07T1,
and A-3485-07T1

Comparable sales used to value a subject property must have the same highest and best use as the subject property. Discussion of functional and external obsolescence.

Immediately after the close of the court year, another opinion was published.

Elrabie v. Borough of Franklin Lakes
24 N.J. Tax ____ (Tax 2008) July 2008

The court concluded that the value of a residence exceeded the

reduced assessment of the county board judgment. Because the municipality failed to file a counterclaim in this revaluation year challenging the county board judgment, the judgment of the county board was affirmed.

B.

STATE TAX CASES

State tax cases decided during the court year covered by this report include those dealing with the Gross Income Tax, the Corporation Business Tax, the Sales and Use Tax, the Estate Tax, and the so called “Mansion Tax” portion of the Realty Transfer Tax. The following published opinions of state tax cases were among the most significant.

CASES

N.J. Natural Gas v. Director, Division of Taxation

24 N.J. Tax 59 (Tax 2008)

Appeal pending – Docket No. A-4874-08T3

Taxpayer did not maintain a regular place of business outside New Jersey and accordingly, was not entitled to allocate income away from New Jersey in computing income taxable under New Jersey’s Corporation Business Tax Act, N.J.S.A. 54:10A-6 (Section 6).

The tax calculated under the statutory standard and the Director’s regulations, although not as favorable to the taxpayer as a Section 6 allocation, was fairly related to the taxpayer’s activities in New Jersey and accordingly, did not violate either the Due Process or the Commerce Clauses of the United States Constitution.

Pfizer v. Director, Division of Taxation

24 N.J. Tax 116 (Tax 2008)

Motion for leave to appeal denied July 30, 2008; motion for leave to appeal to the Supreme Court of New Jersey filed.

The “Throwout Rule” contained in N.J.S.A. 54:10-6(b) of the Corporation Business Tax is facially constitutional under the Due Process, Commerce, and Supremacy Clauses of the United States Constitution because the Rule can operate constitutionally in at least some circumstances.

Wells REIT v. Director, Division of Taxation

24 N.J. Tax 98 (Tax 2008)

Appeal pending - Docket No. A-5276-07T3

The contract for plaintiff's purchase of an office building was not "fully executed before July 1, 2006," as required for exemption from the mansion tax under N.J.S.A. 46:15-7.4, because an amendment to the contract dated after July 1, 2006 reduced the purchase price from \$155,000,000 to \$147,500,000.

Home Depot v. Director, Division of Taxation

24 N.J. Tax 23 (Tax 2008)

Appeal pending – Docket No. A-4064-08T3

Plaintiff's private label credit cards were issued to plaintiff's customers by three finance companies to which plaintiff paid service fees that included unquantified and unallocated amounts intended to reimburse the finance companies for, among other services and expenses, accounts receivable collection losses. The finance companies directly bore all risks of those collection losses and reimbursed plaintiff between 86.2% and 100% of all credit card charges. Under these circumstances, plaintiff was not entitled to a refund of sales tax it collected for and remitted to the State with respect to the uncollectible accounts receivable owned by the finance companies.

Drugstore.com v. Director, Division of Taxation

23 N.J. Tax 624 (Tax 2008)

Appeal pending – Docket No. A-3603-07T3

Plaintiff, the operator of a website located in Washington State with a physical presence in New Jersey, contested an assessment of sales and use tax on sales of merchandise said to have been made by its out-of-state subsidiary through the website and delivered from a New Jersey warehouse to New Jersey customers in a drop shipment transaction. Plaintiff and not its subsidiary was the actual seller of merchandise and therefore liable for collection of the tax. The subsidiary never took title to or possession of the merchandise that it allegedly sold. Plaintiff performed all of the subsidiary's functions in connection with the sales transactions.

VI.

SUPREME COURT COMMITTEE ON THE TAX COURT

The Supreme Court Committee on the Tax Court 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 meets quarterly and is chaired by Michael A. Guariglia, Esquire.

The committee fulfills a vital role in its advisory capacity by developing and recommending rule changes affecting the conduct of the court and the litigants who file cases with the court. The committee continues to review the rules governing the small claims practice of the Tax Court, to comment on proposed legislation, and when necessary, make recommendations for amendments to the statutes.

The committee concluded its two-year tenure with the submission of its biennial report to the Supreme Court in January 2008. Its next report will be filed in January 2010. In the 2008 report, the committee recommended to the Supreme Court that it approve amendments to several Part VIII Rules so as to make the DCM Program Rules the applicable rules to all cases and to discontinue the DCM Pilot Program. These recommendations were approved and promulgated, effective September 1, 2008. In addition to integrating the DCM Pilot Program rules as modified into the rules of Part VIII and minor technical modifications, substantive content changes were made to the following rules:

- R. 8:4-1(a)(4) - Time for Filing
- R. 8:6-8(as amended) - Local Property Tax Cases; Mandatory Settlement Conference

These modifications are more fully described in the Supreme Court Committee's report.

VII.

CONCLUSION

For over twenty-nine years the Tax Court of New Jersey, established in 1979, has provided a forum for the resolution of tax disputes between New Jersey taxpayers and their governments. All of the original judges appointed in 1979 and 1980 are now retired. The institution established by them has proven to be a useful and enduring part of this State's tax structure, a place where aggrieved citizens, businesses, and governments can have their tax disputes impartially and fairly heard and resolved. The work of the court is reported in the 24 volumes of New Jersey Tax Court Reports, the Biennial Reports of the Supreme Court Committee on the Tax Court and the Annual Reports of the Presiding Judge. The product of that work is a more detailed understanding by litigants, taxpayers, and taxing authorities of the tax laws of New Jersey and a reduction in the number of uncertain issues of tax law. Nevertheless, new issues arise and must be resolved, new statutes are enacted and must be interpreted, and the application of existing laws to new business practices requires analysis. Factual issues (such as "what is the value of real property?") will be the subject of disputes as long as taxes are imposed on those values. The Tax Court continues to provide a fair, impartial forum for the resolution of these important and often highly technical issues of tax assessment and administration.

One area that is of particular interest to the taxpayers of New Jersey is this State's heavy reliance on the local property tax for the funding of government services. The need for tax reform is expressed constantly in the halls of government and in the press. "The Legislature may soon be engaged in a major examination of alternatives to the current constitutional, legislative and administrative system of property taxation in New Jersey." Sadly, this precise phrase has appeared in prior annual reports. Despite the promise of

legislative action or a constitutional convention, the other branches of government have continued to fail to address the issues of tax reform and the fiscal crises of the State have become, during my tenure as Presiding Judge, worse and accordingly more difficult to resolve. Eventually, some actions will be taken by the Legislature or a Constitutional Convention. Whatever the nature of the reform, there will inevitably be disagreements about the imposition of taxes in New Jersey. The Judges of the Tax Court of New Jersey stand ready to help resolve disputes as they arise on a case-by-case basis and to build on over twenty-nine years of experience embodied in the written decisions of this court by utilizing the special qualifications, knowledge, and experience of its judges as required by N.J.S.A. 2B:13-6(b).

As Presiding Judge, it is my responsibility to see to both a smooth processing of cases by our court's judges and an orderly plan of succession by newly appointed judges. In this report I have asked that greater resources of the Information Technology Division of the Administrative Office of the Courts be devoted to the Tax Court so that we can reduce our backlog by modernizing and increasingly automating our case processing system. I also ask that qualified new judges be nominated by the Governor and approved by the State Senate. As I wrote last year, "In 1979 Governor Byrne nominated and the State Senate confirmed excellent judges. Succeeding administrations have appointed some judges who have carried on the original judges' work and some who, despite holding tenured positions in the Tax Court, have never heard a Tax Court case. It is now the collective responsibility of the Governor and State Senate to "step up to the plate" and assure the continued quality and vigor of this court by nominating, confirming and appointing judges who meet the requirements of N.J.S.A. 2B:13-6(b)." There is no need to rewrite those thoughts. Despite the appointment of one very well qualified judge in January 2008 – the work of the court in

serving the taxpayers requires judicial appointments to provide the court with the judges and systems it needs to continue its work at a level of competence and efficiency that the litigants have come to expect over the past twenty-nine years.

Respectfully submitted,

Joseph C. Small, P.J.T.C.

September, 2008

APPENDIX

TABLE 2

Twenty-Nine Year History of Tax Court Filings and Dispositions

Year ended	Pending first day of period	Filings	Dispositions	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
6/30/99	9,367	6,356	7,005	8,718
6/30/00	* 9,069	5,386	6,702	7,753
6/30/01	7,753	4,815	4,515	8,053
06/30/02	8,053	5,952	5,932	8,073
6/30/03	8,073	6,639	5,444	9,268
6/30/04	9,268	8,105	5,973	11,400
6/30/05	11,400	7,332	6,719	*12,282
6/30/06	12,282	8,205	7,533	* 13,120
6/30/07	13,120	10,759	8,283	15,596
6/30/08	15,596	***11,760	8,749	18,607

* 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.

*** Includes 79 matters that were reinstated. The actual number of new cases filed was 11,681.

TABLE 3

**TAX COURT OF NEW JERSEY PRODUCTIVITY
DISPOSITIONS PER JUDGE 1997-2008**

Year ended	Pending first day of period	Filings	Dispositions	Pending last day of period	# of Judges (full time equivalents)	Dispositions per Judge
6/30/97	14,085	7,954	10,406	11,633	9 for 6 months – Hamill deceased 12/1996; Crabtree retired 6/1997; (does not include Axelrad part-time)	1156
6/30/98	11,633	7,124	9,390	9,367	8 for 10 months – Axelrad appointed full time to Tax Court; Rimm retired 2/1998; Dougherty resigned 5/1998	1174
6/30/99	9,367	6,356	7,005	8,718	6	1168
6/30/00	* 9,069	5,386	6,702	7,753	6	1117
6/30/01	7,753	4,815	4,515	8,053	4 – Axelrad appointed to Appellate Division 6/2000; Andrew retired 10/2000	1129
06/30/02	8,053	5,952	5,932	8,073	5 – Bianco appointed 8/2001	1186
6/30/03	8,073	6,639	5,444	* 9,268	6 – Menyuk appointed 8/2002	907
6/30/04	9,268	8,105	5,973	11,400	7 – Hayser transferred to Tax Court	853
6/30/05	11,400	7,332	6,719	12,282	7 – Kahn retired 6/2005	960
6/30/06	12,282	8,205	7,533	* 13,120	6	1256
6/30/07	13,120	10,759	8,283	15,596	6	1381
6/30/08	15,596	11,760	8,749	18,607	6.5 - DeAmeida appointed 1/2008	1346

* Adjusted to reflect year-end physical case inventory.

TABLE 4**TAX COURT CASES APPEALED TO THE APPELLATE DIVISION**
1979-2008

Court Year	Number of Cases
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
1998-1999	58
1999-2000	45
2000-2001	35
2001-2002	41
2002-2003	50
2003-2004	34
2004-2005	41
2005-2006	46
2006-2007	38
2007-2008	46

TABLE 5

ACTIONS TAKEN BY APPELLATE DIVISION ON TAX COURT CASES

COURT YEAR 2007-2008

Action	Number of Cases
Affirmed	13
Dismissed	13
Reversed & Remanded	3
Motion for leave to appeal denied	3
Motion for leave to appeal granted	2
Remanded	1
Total Dispositions	35

TABLE 6

TAX COURT CASES PENDING, FILED AND DISPOSED
COURT YEAR 2007-2008

	Local Property Tax	State Tax	Equalization & related cases	Totals
Cases pending as of first day of period	14,968	627	1	15,596
New cases filed during period	11,126	550	5	11,681
Reinstated	75	4	0	79
Subtotal	26,169	1,181	6	27,356
Cases disposed	8,230	513	6	8,749
Pending	17,939	668	0	18,607

TABLE 7

CHARACTER OF COMPLAINTS FILED
COURT YEAR 2007-2008

1.	<u>Local Property Tax</u>	<u>FILED</u>	<u>REINSTATED</u>
	Regular	8,998	66
	Small Claims (one to four family houses)	2,128	9
	Total	11,126	79
2.	<u>Cases Other than Local Property Tax</u>		
	<u>State Tax</u>		
	Regular	177	3
	Small Claims (mostly homestead Rebates & related cases)	378	1
	Total	555	4
		11,681	79
	<u>Type of Tax</u>		
	Corporation Business	34	
	Cigarette	3	
	Emergency Response Fee	1	
	Equalization Table	5	
	Estate Tax	7	
	Fair Tenant	13	
	Gross Income	36	
	Gross Receipts	1	
	Homestead Rebate	259	
	Inheritance Tax	11	
	Litter Tax	2	
	Mansion Tax	3	
	Motor Fuels Sales	4	
	Motor Fuels Use	1	
	NJ Saver	7	
	Property Tax Reimbursement	92	
	Order to Reval	2	
	Railroad Franchise	2	
	Railroad Property	2	
	Realty Transfer Fee	13	
	Sales and Use	49	
	Unemployment Tax/Temp Disability	1	
	10-day Deficiencies	11	
	Grand Total	559	

TABLE 8
LOCAL PROPERTY TAX COMPLAINTS FILED BY COUNTY
2001-2008

	6/30/01	6/30/02	6/30/03	6/30/04	6/30/05	6/30/06	6/30/07	6/30/08
Atlantic	63	99	59	90	53	78	148	128
Bergen	871	986	946	1,222	1,475	1,553	2,080	2,369
Burlington	55	54	52	69	97	120	115	160
Camden	62	68	80	75	69	96	137	120
Cape May	33	12	30	32	48	56	116	176
Cumberland	18	12	13	6	16	18	22	32
Essex	927	1,059	**1,433	**2,357	1,471	1,617	2,226	2,523
Gloucester	37	48	52	53	57	59	70	88
Hudson	458	381	645	457	412	439	424	522
Hunterdon	43	48	76	53	34	54	71	48
Mercer	63	78	79	103	91	153	222	180
Middlesex	204	248	339	464	536	752	896	901
Monmouth	179	265	292	375	488	487	537	848
Morris	411	486	690	563	560	583	574	581
Ocean	98	391	97	131	180	268	718	555
Passaic	494	592	298	486	446	480	757	989
Salem	10	6	7	15	13	10	24	28
Somerset	147	296	269	164	212	271	229	221
Sussex	19	79	77	44	31	39	74	111
Union	296	346	338	456	519	526	586	573
Warren	58	43	48	49	44	55	41	48
TOTALS*	4,546	5,597	5,920	7,264	6,852	7,714	10,067	11,201

* This figure does not include added assessment, omitted assessment, farmland assessment or correction of error complaints which approximated 100 filings a year.

** Large increase due to Newark revaluation