

# TAX COURT OF NEW JERSEY



## **ANNUAL REPORT OF THE PRESIDING JUDGE OF THE TAX COURT OF NEW JERSEY JULY 1, 2009 - JUNE 30, 2010**

The Tax Court of New Jersey  
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Web page: [www.judiciary.state.nj.us/taxcourt](http://www.judiciary.state.nj.us/taxcourt)

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## I.

### INTRODUCTION & HIGHLIGHTS

During the 2009-2010 court year, there were 18,426 cases docketed in the Tax Court of New Jersey, more than in any year in the court's thirty-one-year history. An additional 2,578 complaints were filed, but not yet docketed as of June 30, 2010. Because of the single filing deadline, April 1, for the vast majority of cases, the court was unable to docket all of the complaints filed prior to the last day of the court year. The docketing of complaints is labor intensive for the Tax Court staff, given the number of data fields that must be entered into the court's case management system and the absence of electronic filing.

This is the second court year in a row that the court's filings have been at a record-setting high. Filings are expected to increase during the 2010-2011 court year for a variety of reasons. First, the national economy's continuing negative impact on real property values, which is the core issue in the vast majority of cases before the court, will likely continue to cause an increase in the number of local property tax appeals until economic conditions improve. In addition, a significant number of municipal-wide revaluations and reassessments are anticipated for tax year 2011. Revaluations and reassessments historically result in increased Tax Court filings from the affected municipalities. Finally, the court will receive appeals during the 2010-2011 court year from the decisions of the county boards of taxation concerning tax year 2010. Many county boards completed their work for tax year 2010 in August 2010 and the deadline for appeals from those decisions has not yet passed. In addition, a number of county boards of taxation are still hearing cases as of the date of this report. The court will continue to receive appeals from decisions rendered by those bodies for the remainder of calendar year 2010, and perhaps beyond. Thus, tax year 2010 filings will affect the number of filings for the 2010-2011 court year.

Dispositions during the 2009-2010 court year totaled 10,938 cases. We disposed of a large number of cases despite the fact that the court has had one vacancy for most of the 2009-2010 court year. This accomplishment is due, in part, to streamlining the process for docketing complaints, memorializing settlements and issuing judgments. In addition, judges and non-judicial staff, including the staff in the Tax Court Management Office, have made a concerted effort to close cases with increased efficiency and speed while maintaining the accuracy that is essential to an effective system of taxation.

As of October 1, 2010, the court will have two vacancies. While awaiting the appointment of new judges by the Executive and Legislative branches, the five judges remaining on the Tax Court will take on increasing caseloads. At present, Presiding Judge DeAlmeida sits in both Trenton and Newark and manages two full dockets. Although the court confronts this challenging environment with enthusiasm, litigants may experience delays in having matters scheduled for trial or brought to resolution until the vacancies are filled.

## II.

### THE COURT

The Tax Court was established on July 1, 1979 as a trial court with statewide jurisdiction to review State and local property tax assessments. Over the past thirty-one years, the court has disposed of over 250,000 cases. By publishing more than 1,100 of its opinions, the court has established a uniform and coherent framework for the resolution of tax disputes in New Jersey. The development of a body of legal precedents in the area of taxation benefits the State and its taxpayers by facilitating the implementation of tax policy, as decided by our Legislature and Governor, and providing a reliable structure in which to resolve conflicts regarding taxation. In addition to deciding tax disputes, Tax Court judges hear Superior Court cases in which the court's expertise in taxation is desirable. The court

has helped resolve complex issues relating to taxation and asset valuation in business, matrimonial, foreclosure, condemnation, and other cases.

One judicial vacancy existed on the Tax Court at the start of the 2009-2010 court year. Two judges, Presiding Judge Joseph C. Small and Judge Peter D. Pizzuto, retired during the court year. Presiding Judge Small left the court on October 1, 2009, after 18 years of service. Judge Pizzuto retired on November 1, 2009, completing 22 years on the court. Two of the three vacancies during the court year were filled by newly appointed judges: Judge Mala Narayanan, who was sworn in on July 27, 2009, and Joseph M. Andresini, who took office on October 1, 2009. As noted above, one vacancy remains unfilled. Judge Raymond A. Hayser has announced his retirement from the bench effective October 1, 2010, after 17 years of service. As a result, the court will have two vacancies as of that date. Chief Justice Rabner appointed Judge Patrick DeAlmeida as Presiding Judge of the Tax Court effective October 1, 2009. Of the twelve authorized Tax Court judges, two judges are temporarily assigned to the Superior Court, Appellate Division, and three judges are temporarily assigned to Superior Court trial divisions. In this way, the court contributes to the disposition of cases by the judiciary overall.

As of October 1, 2010, five judges will be assigned to the Tax Court: Presiding Judge Patrick DeAlmeida, Judge Vito L. Bianco, Judge Gail L. Menyuk, Judge Mala Narayanan, and Judge Joseph M. Andresini. The judges maintain chambers and hear cases in Hackensack (Judge Andresini), Newark (Presiding Judge DeAlmeida and Judge Narayanan), Morristown (Judge Bianco), and Trenton (Presiding Judge DeAlmeida and Judge Menyuk). Each judge is designated to hear local property tax cases from specific counties and municipalities. These cases are assigned by the Tax Court Management Office according to the location of the property at issue. Cases concerning State taxes are individually assigned by Presiding Judge DeAlmeida generally based on the location of the

lawyers or parties.

Table 1 categorizes filings and dispositions for the 2009-2010 court year. 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, 98%, involve local property tax. The remaining 2% of cases concern assessments by the Director, Division of Taxation, of State taxes, such as gross income tax, corporation business tax, sales and use tax, transfer inheritance tax, as well as other taxes, homestead rebate cases, and challenges to equalization tables and school aid ratios. Although these cases are small in number, they tend to be complicated and often involve difficult questions of constitutional law, statutory interpretation and evidentiary issues that require significant judicial resources.

TABLE 1  
TAX COURT OF NEW JERSEY  
CATEGORIES OF CASES FILED  
COURT YEAR 2009-2010

<b>A. Cases filed by general category</b>		
Local property tax cases <sup>1</sup>	98%	(18,147 cases)
State tax and Equalization Table cases	2%	(279 cases)
Total	100%	(18,426 cases)
<b>B. Local property tax cases filed during the court year</b>		
Regular cases	67%	(12,135 cases)
Small claims cases (Residential/1 – 4 family homes)	33%	(6,012 cases)
Total	100%	(18,147 cases)
<b>C. State tax and Equalization Table cases filed during the court year</b>		
State tax cases (other than Homestead Rebate & related cases)	65%	(180 cases)
Homestead rebate & related cases	31%	( 86 cases)
Equalization Table cases	4%	(13 cases)
Total	100%	(279 cases)

More detailed Tax Court statistics for the 2009-2010 court year can be found in the appendix.

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<sup>1</sup> As noted above, as of June 30, 2010, 2,578 appeals that were filed with the court but not docketed. These additional cases are not reflected in the 18,426 cases docketed.

### 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, but also it manages the resources needed to support the Tax Court judges and support staff in four separate locations. Specifically, the Tax Court Management Office accepts papers for filing, assigns local property tax 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, 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 Tax Court Management Office also furnishes sample forms, court rules and pamphlets explaining Tax Court procedures.

The Tax Court Management Office continues to make significant improvements to its automated case management system and case processing procedures. Enhancements made during the 2009-2010 court year streamlined procedures for docketing complaints, processing settlements and entering judgments and have enabled the court to process cases more efficiently. In addition, changes have allowed the staff 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.

The Tax Court has been identified by the Administrative Office of the Courts as an appropriate target for implementation of electronic filing. Our case types lend themselves well to electronic filing, given the data-intensive nature of most matters. We recently began an anticipated two-month, detailed study of the court's case management practices and case information system to chart the course for a paperless Tax Court docket. While full implementation of electronic filing at the Tax Court does not yet have a certain time frame, the judges and staff are excited about the prospect of modernizing our management of cases. We are hopeful that practical considerations and funding decisions will make electronic filing a reality for the Tax Court in the near future. Until that time, the judges and staff continue to take advantage of existing technology to facilitate the efficient management of our docket, including upgrades to our existing case management system, which the Judiciary has the in-house resources, including talented staff, to implement.

Currently, the caseload per Tax Court FTE (full time equivalent) employee is higher than the staffing models established for the Superior Court's Law Division and General Equity cases, Landlord-Tenant cases and Small Claims cases.<sup>2</sup> Additionally, unlike the management of cases in the Superior Court, the intensity of case management by the Tax Court case managers is more complex and the vast majority of Tax Court judgments are prepared and mailed by support staff in the Tax Court Management Office. During the 2009-2010 court year, the Tax Court Management Office successfully streamlined the process for distributing judgments by creating summary reports which are posted on the court's website. This allowed the court to abandon the practice of mailing individual copies of judgments to county boards of taxation and tax collectors, resulting in a significant

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2. The Tax Court case management staff is comprised of thirteen FTEs: 11 permanent full time and four part-time hourly employees calculated as two FTEs. The staff has on average 2,414 cases per FTE to manage and 1,417 new filings per FTE to docket. Directive # 05-09 dated June 25, 2009, effective during the 2009-2010 court year indicates a Superior Court, Civil Division staffing model of one FTE for every 182 Law Division and General Equity cases, one FTE for every 1,500 landlord-tenant cases and one FTE for every 1,100 small claims cases.

savings of time and resources. However, statutory mandates and court rules still require that a copy of each judgment must be sent to three locations: two attorneys and the tax assessor.

To provide timely and efficient service to litigants, various reports and information are made available on the Tax Court Website. For example, the Tax Court regularly updates reports listing the judgments entered each month and new cases docketed. Other information available on the court's website includes: published Tax Court opinions, related Appellate Division opinions, notices regarding important changes to Tax Court policies, all state and local property Tax Court forms, the Rules of the Tax Court (Part VIII), 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.

#### IV.

#### CASELOAD

#### A.

#### FILINGS AND DISPOSITIONS

Table 2 (page 19) summarizes the thirty-one year history of filings and dispositions of Tax Court cases. At the beginning of the 2009-2010 court year, the Tax Court had an inventory of 23,902 cases. Tax Court cases filed during the court year totaled 18,354 and 72 previously closed cases were reinstated. Thus, the aggregate total number of cases in inventory was 42,328. Dispositions for the court year totaled 10,938 cases, resulting in an inventory of 31,390 cases at the end of the court year.<sup>3</sup> Due to several years of increasing filings, the Tax Court judges were not able to clear the calendar. However, the court accomplished a great deal by resolving 46% of the caseload pending at the beginning of the court year and by issuing opinions in several notable cases described in detail later in this

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

report. The total current inventory constitutes approximately three years of dispositions at the current rate of disposition. That is not consistent with our objective of closing standard track cases within eighteen months to two years after filing. At the current time, approximately 21% of the court's caseload is in "backlog" (cases over two years old). We find that this is an unacceptably high number, but one that can reasonably be expected given the increase in case filings over the past three years and continued judicial vacancies.

B.

### PRODUCTIVITY

Table 3 (page 20) indicates the number of dispositions per Tax Court Judge per year for the past fourteen 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 or 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 retirements, Judges Lasser and Lario were on recall and carried almost a full caseload. 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 four court years (2006-2007, 2007-2008, 2008-2009, and 2009-2010) are greater than they have been in any of the past fourteen years. 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.

It should be noted that dispositions per judge per year is not the sole measure of the quantity and quality of the court's work. The court has developed a significant body of law through published opinions reported in Volumes 1 to 25 of the New Jersey Tax Court Reports. The published opinions reflect a small fraction of the detailed written and oral opinions issued by Tax Court judges during the 2009-2010 court year. A description of the most significant Tax Court opinions, as well as significant published opinions of appellate courts, follows.

C.

APPEALS FROM TAX COURT DECISIONS

1. SUPREME COURT OF NEW JERSEY

During the 2009-2010 court year, the Supreme Court of New Jersey denied certification in seven cases that originated in the Tax Court and granted certification in two. In addition, one motion for leave to appeal was granted. The Court rendered opinions in five Tax Court matters:

A. **Praxair Technology, Inc. v. Director, Division of Taxation**  
201 N.J. 126 (2010)

In administering N.J.S.A. 54:10A-2, a section of the Corporation Business Tax Act, the Director may give retroactive effect to N.J.A.C. 18:7-1.9(b), promulgated in 1996. The regulation provides in a clarifying example that a foreign corporation is subject to Corporation Business Tax if it earns licensing fees from its parent company for the use of the foreign corporation's intellectual property in New Jersey

B. **Lucent Technologies, Inc. v. Township of Berkeley Heights**  
201 N.J. 237 (2010)

Rule 8:7(e) does not place a time limit on a municipality's ability to move to dismiss a challenge to a local property tax assessment based on a taxpayer's false or fraudulent response to a request for income and expense information pursuant to N.J.S.A. 54:4-34, commonly known as Chapter 91. Also, a taxpayer is entitled to a reasonableness hearing pursuant to Ocean Pines, Ltd v. Borough of Point Pleasant, 112 N.J. 1 (1998), when the taxpayer's complaint is dismissed for providing a false and fraudulent response to a Chapter 91 request.

- C. **Davanne Realty v. Township of Edison**  
201 N.J. 280 (2010)  
**1717 Realty Assocs. v. Borough of Fair Lawn**  
201 N.J. 275 (2010)

Dismissal of a complaint challenging a local property tax assessment for failure to respond to a request for income and expense information pursuant to N.J.S.A. 54:4-34, commonly known as Chapter 91, does not constitute an Excessive Fine under the Eighth Amendment of the United States Constitution or Article I, Paragraph 12 of the New Jersey Constitution.

- D. **City of Atlantic City v. Trupos**  
201 N.J. 447 (2010)

In the circumstances of this case, counsel is not precluded by R.P.C. 1.8 from representing taxpayers challenging local property tax assessments against a municipality previously represented by the same counsel. The current matter and past representation are not substantially related under the rule because counsel's prior representation concerned casino and commercial properties and the present matter concerns residential property, the record contains no evidence that counsel was privy to confidential information during prior representation and the current matter concerns a different tax year than was at issue in prior representation.

## 2. SUPERIOR COURT, APPELLATE DIVISION

During the 2009-2010 court year, appeals from 47 Tax Court decisions were filed with the Superior Court, Appellate Division. Table 4 (page 21) provides the number of Tax Court cases appealed to the Appellate Division over the past thirty years. Table 5 (page 22) shows the disposition of Tax Court cases by the Appellate Division during the 2009-2010 court year. Appellate Division opinions concerning tax matters are published either in the New Jersey Superior Court Reports or the New Jersey Tax Court Reports. Significant published opinions issued by the Superior Court, Appellate Division during the 2009-2010 court year in cases that originated in the Tax Court included:

- A. **International School Services, Inc. v. Township of West Windsor**  
412 N.J. Super. 511 (App. Div.), certif. granted, 2010 N.J. Lexis 723 (2010)

Office condominium used by non-profit organization with the stated goal of

“aiding, promoting and encouraging” international schools for American students “by all appropriate means” is used for the “moral and mental improvement of men, women and children,” as required for an exemption from local property taxation. However, the fact that the organization uses profits from its non-profit activities at the property for profit-making purposes renders the exemption inapplicable.

**B. Presbyterian Home at Pennington, Inc. v. Borough of Pennington**  
409 N.J. Super. 166 (App. Div. 2009), certif. denied, 201 N.J. 143 (2010)

Assisted living facility is eligible for exemption from local property taxes as hospital purpose property, even if the assisted living facility is not part of or integrated into a hospital and does not provide charitable care.

**C. McKesson Water Products Co. v. Director, Division of Taxation**  
25 N.J. Tax 213 (App. Div.), certif. denied, 200 N.J. 506 (2009)

Bottled water processing and distribution company’s election under I.R.C. §338(h)(10) to treat sale of stock as a liquidation and distribution to shareholders did not create operational income allocable to New Jersey under the Corporation Business Tax Act. Consequently, the gain derived from the deemed asset sale is allocable to California, the location of the corporation’s principal place of business.

**D. Home Depot, U.S.A. v. Director, Division of Taxation**  
25 N.J. Tax 221 (App. Div. 2009), certif. denied, 201 N.J. 157 (2010)

Taxpayer not entitled to refund of sales tax remitted with respect to purchases on private label credit cards that proved uncollectible. Losses from uncollected debts were borne not by the taxpayer but by the financing companies responsible under contract to provide private label credit card services to the taxpayer.

3. TAX COURT OPINIONS

Published Tax Court opinions are reported in New Jersey Tax Court Reports. As of the date of this report, there are 24 complete volumes of the New Jersey Tax Court Reports and a 25<sup>th</sup> volume which is partially complete.

(1) LOCAL PROPERTY TAX CASES

The following published opinions of the Tax Court concerning local property taxes

were the most significant of the 2009-2010 court year:

**A. AHS Hospital Corp. v. Town of Morristown**

25 N.J. Tax 374 (Tax 2010)

Portions of the buildings owned by Morristown Memorial Hospital, incorporated into the hospital's campus, and used as medical offices and a café are not exempt from local property taxes as hospital purpose properties because the spaces are used by private physicians and other private, third parties for profit-making purposes. Fact that the medical offices and café serve hospital patients and their visitors does not overcome the profit making nature of the activities taking place on the property.

**B. Austin v. Township of Pemberton**

25 N.J. Tax 362 (Tax 2010)

County board of taxation may not dismiss a local property tax appeal for lack of prosecution where the taxpayer testifies about the taxpayer's recent purchase and characteristics of the subject property. Such testimony, while not necessarily sufficient to warrant a reduction in an assessment, constitutes some evidence of true value sufficient to allow the taxpayer to file a subsequent appeal of the county board of taxation's decision in the Tax Court. The court also held that a county board of taxation may not refuse to permit a taxpayer to testify at his hearing and thereafter dismiss the appeal for lack of prosecution.

**C. Hopatcong Fuel on You, LLC v. Borough of Hopatcong**

25 N.J. Tax 389 (Tax 2010)

**O'Rourke v. Township of Fredon**

2010 N.J. Tax Lexis 10 (Tax 2010)

There is no requirement under N.J.S.A. 54:3-21 or R. 8:4-1(a)(4) to file or serve a copy of a complaint challenging a local property tax assessment with the municipal tax assessor or municipal clerk by the filing deadline for said appeal. In the absence of any showing by the municipality that late service of the complaint on municipal tax assessor or municipal clerk caused harm, complaint will not be dismissed.

**D. Princeton Alliance Church v. Township of Mount Olive**

25 N.J. Tax 282 (Tax 2009)

County board of taxation may not dismiss a taxpayer's challenge to a local property tax assessment for lack of prosecution where taxpayer's counsel appeared at board hearing prepared to present legal argument for partial exemption instead of producing witnesses, since no statute, regulation or case law requires a taxpayer to present a witness to prosecute an appeal. The county board of taxation is authorized to consider purely legal arguments that

property is partially exempt.

**E. Trebour Trustees v. Township of Randolph**  
25 N.J. Tax 227 (Tax 2009)

Requirement in N.J.S.A. 54:3-27 that all taxes and municipal charges due on property that is the subject of an appeal must be paid at the time that the complaint is filed in the Tax Court is specific to the property rather than the owner of the property. Thus, the fact that the taxpayer had not paid all taxes and municipal charges on other property in the municipality owned by the taxpayer does not require dismissal of appeal concerning property for which all taxes and municipal charges have been paid.

**F. Aperion Enterprises v. Borough of Fair Lawn**  
25 N.J. Tax 70 (Tax 2009)

Tenant in triple net lease is entitled to control appeals of local property tax assessment, including the authority to accept settlement offers by the municipality, even though landlord, a co-plaintiff in the appeals, sought such control and authority. A triple net lease that requires tenant to pay to tax collector all local property taxes on the subject property vests in the tenant the right to collect any refunds of those taxes as the result of successful tax appeals, absent an agreement to the contrary by the parties to the lease.

(2) STATE TAX CASES

The following published opinions of the Tax Court concerning State taxes were among the most significant of the 2009-2010 court year:

**A. Sogness v. Director, Division of Taxation**  
25 N.J. Tax 355 (Tax 2010)

Use tax on cigarettes purchased by mail order from out-of-state, unlicensed vendor is properly calculated on the purchase price paid to the vendor and not on the sum of the purchase price plus the cigarette tax.

**B. Telebright Corp. v. Director, Division of Taxation**  
25 N.J. Tax 333 (Tax 2010)

Delaware company with offices in Maryland is “doing business” in New Jersey under the Corporation Business Tax Act by virtue of the fact that the company permits an employee to “telecommute” by receiving her work assignments each business day via e-mail at her New Jersey home from a supervisor in Maryland. The employee performs her work at her New Jersey



home and uploads her finished product onto the employer's server in Maryland at the end of the business day. Application of the tax to the taxpayer in these circumstances does not offend the Due Process Clause or Commerce Clause of the United States Constitution.

C. **Horizon Blue Cross Blue Shield v. Director, Division of Taxation**  
25 N.J. Tax 290 (Tax 2009)

The court confirmed the Director's \$145,000,000 plus assessment under the Premium Tax Cap statute, N.J.S.A. 54:18A-6, rejecting the taxpayer's challenge to an amendment to the statute, which excluded the taxpayer from the benefits of an important provision of the statute. The court held that the amendment, which, in effect, applied only to the taxpayer, was rationally related to the legitimate State purpose of raising revenue and did not constitute unconstitutional special legislation.

D. **Mack-Cali Realty, LP v. Clerk of Bergen County**  
25 N.J. Tax 243 (Tax 2009)

The Director's treatment of transactions between commonly-owned entities for Realty Transfer Fee purposes, embodied in N.J.A.C. 18:16-6.1, is inconsistent with the Realty Transfer Fee statute, N.J.S.A. 46:15-5, *et seq.*, in that the Director does not recognize the possibility of transfers between such entities for nominal consideration so as to be exempt from the Realty Transfer Fee.

E. **Ridgewood Commons Group, LLC v. Director, Division of Taxation**  
25 N.J. Tax 188 (Tax 2009)

Where two properties, one subject to the mansion tax and one not, are transferred in one deed with a single-stated consideration, the tax may be imposed only on the property subject to the tax. The court rejected the Director's contention that the plain language of N.J.A.C. 18:16-8.5 requires that the tax be calculated on the basis of the entire consideration stated in the deed. The tax will be calculated based on the actual allocation of consideration among the parcels by the parties to the transaction.

F. **AccuZIP, Inc. v. Director, Division of Taxation**  
25 N.J. Tax 158 (Tax 2009)

The sale of CD-ROMs in New Jersey by out-of-state companies with no presence in the State does not create a substantial nexus between those companies and New Jersey to justify taxation under the Corporation Business Tax Act without violating the Commerce Clause. In addition, the court held that of the two companies involved, one was subject to the minimum tax pursuant to N.J.S.A. 54:10A-5 based on the employment of a regional sales

representative in New Jersey, which was a protected activity under P.L. 86-272.

V.

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 completed its charge for the 2008-2009 and 2009-2010 court years with the issuance of its report in January 2010. Its next report will be filed in January 2012.

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 practice of the Tax Court, to comment on proposed legislation, and when necessary, make recommendations for amendments to the statutes.

During this committee's tenure, there was particular focus on evaluating the small claims jurisdiction of state and local tax assessments. The committee recommended to the Supreme Court that it approve amendments to R. 8:3-4 and R. 8:11. The Court adopted the committee's recommendation. As a result of the amendments, beginning September 1, 2010, Small Claims Division jurisdiction will continue to be available to properties classified as one- to four-family residences, exemptions and farmland matters. In addition, all other properties on which the prior year's taxes are less than \$25,000 will be assigned to the Small Claims Division. In State tax cases assessments of \$5,000 or less, up from \$2,000 or less, will qualify for the Small Claims Division. The Supreme Court also adopted the

committee's recommendation to amend R. 8:3-2 and R. 8:3-5. These rules changes were required by the Legislature's amendment to N.J.S.A. 54:3-21, which increased the threshold for seeking direct review by the Tax Court of local property assessments to \$1,000,000 or more for most appeals. These modifications are more fully described in the Supreme Court Committee's report.

Respectfully submitted,

Patrick DeAlmeida, P.J.T.C.

Dated: September 21, 2010

TABLE 2

## THIRTY YEAR HISTORY OF TAX COURT FILINGS AND DISPOSITIONS

Year ended	Pending first day of period	Filings	Dispositions	Pending last day of period
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
6/30/09	18,607	14,103	8,808	23,902
6/30/10	23,902	18,426	10,938	31,390

\* 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.

TABLE 3

TAX COURT OF NEW JERSEY PRODUCTIVITY  
DISPOSITIONS PER JUDGE 1997-2010

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)	1,156
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	1,174
6/30/99	9,367	6,356	7,005	8,718	6	1,168
6/30/00	* 9,069	5,386	6,702	7,753	6	1,117
6/30/01	7,753	4,815	4,515	8,053	4 - Axelrad appointed to Appellate Division 6/2000; Andrew retired 10/2000	1,129
06/30/02	8,053	5,952	5,932	8,073	5 - Bianco appointed 8/2001	1,186
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	1,256
6/30/07	13,120	10,759	8,283	15,596	6	1,381
6/30/08	15,596	11,760	8,749	18,607	6.5 - DeAmeida appointed 1/2008	1,346
6/30/09	18,607	14,103	8,808	23,902	7 - Kuskin retired 6/2009	1,258
6/30/10	23,902	18,426	10,938	31,390	6 - Small, Pizzuto retired 10/2009; Narayanan appointed 7/2009; Andresini appointed 10/2009	1,823

\* Adjusted to reflect year-end physical case inventory.

TABLE 4

## TAX COURT CASES APPEALED TO THE APPELLATE DIVISION 1979-2010

<b>Court Year</b>	<b>Number of Cases</b>
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
2008-2009	33
2009-2010	47

TABLE 5

ACTIONS TAKEN BY APPELLATE DIVISION ON TAX COURT CASES  
COURT YEAR 2009-2010

Action	Number of Cases
Affirmed	18
Dismissed	10
Reversed & Remanded	1
Motion for leave to appeal granted	3
<b>Total Dispositions</b>	<b>32</b>

TABLE 6

TAX COURT CASES PENDING, FILED AND DISPOSED  
COURT YEAR 2009-2010

	Local Property Tax	State Tax	Equalization & related cases	Totals
Cases pending as of first day of period	23,276	626	0	23,902
New cases filed during period	18,081	260	13	18,354
Reinstated	66	6	0	72
Subtotal	41,423	892	13	42,328
Cases disposed	10,506	419	13	10,938
Pending	30,917	473	0	31,390



TABLE 7

CHARACTER OF COMPLAINTS FILED  
COURT YEAR 2009-2010

1.	<u>Local Property Tax</u>	<u>FILED</u>	<u>REINSTATED</u>
	Regular	12,075	60
	Small Claims (one to four family houses)	6,006	6
	<b>Total</b>	<b>18,081</b>	<b>66</b>
2.	<u>Cases Other than Local Property Tax</u>		
	<u>State Tax</u>		
	Regular	177	5
	Small Claims (mostly Homestead Rebates & related cases)	96	1
	<b>Total</b>	<b>273</b>	<b>6</b>
		<b>18,354</b>	<b>72</b>
	<u>Type of Tax</u>		
	Corporation Business	34	
	Cigarette	5	
	Estate Tax	2	
	Fair Tenant Rebate	2	
	Gross Income	40	
	Fair Homestead Rebate	53	
	Inheritance Tax	10	
	Litter Tax	1	
	Mansion Tax	3	
	Miscellaneous	2	
	Motor Fuels Sales	2	
	NJ Saver	1	
	Non-Residential Development Fee (COAH)	2	
	Property Tax Reimbursement	30	
	Railroad Property	6	
	Responsible Party	1	
	Realty Transfer Fee	5	
	School Aid	13	
	Sales and Use	54	
	Transfer from Superior Court	1	
	10-Day Deficiencies	12	
	<b>Grand Total</b>	<b>279</b>	

TABLE 8

LOCAL PROPERTY TAX COMPLAINTS FILED BY COUNTY  
2000-2010

	6/30/01	6/30/02	6/30/03	6/30/04	6/30/05	6/30/06	6/30/07	6/30/08	6/30/09	6/30/10
Atlantic	63	99	59	90	53	78	148	128	256	374
Bergen	871	986	946	1,222	1,475	1,553	2,080	2,369	2,761	3699
Burlington	55	54	52	69	97	120	115	160	248	395
Camden	62	68	80	75	69	96	137	120	158	214
Cape May	33	12	30	32	48	56	116	176	110	123
Cumberland	18	12	13	6	16	18	22	32	52	52
Essex	927	1,059	*1,433	*2,357	1,471	1,617	2,226	2,523	2,743	3109
Gloucester	37	48	52	53	57	59	70	88	111	144
Hudson	458	381	645	457	412	439	424	522	773	1105
Hunterdon	43	48	76	53	34	54	71	48	68	91
Mercer	63	78	79	103	91	153	222	180	206	243
Middlesex	204	248	339	464	536	752	896	901	966	1248
Monmouth	179	265	292	375	488	487	537	848	1,019	1747
Morris	411	486	690	563	560	583	574	581	797	1078
Ocean	98	391	97	131	180	268	718	555	722	1015
Passaic	494	592	298	486	446	480	757	989	1,456	1546
Salem	10	6	7	15	13	10	24	28	34	41
Somerset	147	296	269	164	212	271	229	221	316	546
Sussex	19	79	77	44	31	39	74	111	78	352
Union	296	346	338	456	519	526	586	573	711	948
Warren	58	43	48	49	44	55	41	48	50	77
<b>TOTALS*</b>	<b>4,546</b>	<b>5,597</b>	<b>5,920</b>	<b>7,264</b>	<b>6,852</b>	<b>7,714</b>	<b>10,067</b>	<b>11,201</b>	<b>13,635</b>	<b>18,147</b>

\* Large increase due to Newark revaluation