

# **TAX COURT OF NEW JERSEY**



## **ANNUAL REPORT OF THE PRESIDING JUDGE OF THE TAX COURT OF NEW JERSEY JULY 1, 2014 - JUNE 30, 2015**

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## I.

### INTRODUCTION

There were two major developments at the Tax Court during the 2014-2015 court year. First, the court instituted an electronic case initiation and document filing system for local property tax appeals. As of February 2, 2015, the program, known as eCourts Tax, was made available on a voluntary basis to any attorney admitted to practice law in New Jersey. The program allows all new local property tax appeals to be initiated by the electronic filing of a Complaint through a web-based portal. Electronic case initiation automatically assigns the Complaint a docket number, collects the appropriate filing fee, and serves the Complaint and accompanying documents on any attorney registered to use the program. Electronic case initiation eliminates a significant amount of data entry by Tax Court staff, allowing for the more efficient operation of the Tax Court Management Office. In addition, as of the February 2, 2015 start date, registered attorneys have the option of electronically filing all papers in all local property tax matters, regardless of when those cases were initiated or whether those cases were initiated electronically or by paper. Electronic filing of any document automatically enters that document in the electronic case jacket and the court's case management system, collects any applicable filing fee, notifies the appropriate Judge's staff to the existence of the document, and effectuates service on any registered attorney appearing in the matter.

Although optional, the eFiling program was widely used during the court's tax year 2015 filing season. Approximately 66% of the cases filed in the Tax Court during the 2014-2015 court year were initiated electronically. By the end of the 2014-2015 court year, nearly 15,000 non-pleading documents also had been filed electronically.

The court recognized many benefits from the eCourts Tax program. At the end of the court year, all tax year 2015 Complaints had been docketed, with the exception of the paper

Complaints received in the days prior to June 30, 2015. By contrast, on June 30, 2014, at the end of the 2013-2014 court year more than 900 paper Complaints had not been docketed. This improvement in the pace of docketing is the result of the elimination of data entry by staff for electronically filed Complaints. In addition, as of the end of the 2014-2015 court year, the filing fees for all Complaints had been processed in a timely fashion, a result attributable, in part, to the fact that the electronic filing system automatically debits filing fees from attorneys' Judiciary collateral accounts. The court also realized a savings in paper, copying, postage, and staffing costs as we began to use eCourts Tax to file and distribute most court documents, including notices, orders, opinions and judgments.

Based on the success of the eCourts Tax program, the Tax Court intends to seek Supreme Court approval for the phased-in mandatory use of the eFiling system by all attorneys by the tax year 2016 filing season. Mandatory participation will maximize the use of eCourts Tax and move the Judiciary toward the goals outlined in the June 15, 2009 "Report of the Supreme Court Special Committee on Electronic Filing" (specifically A2 – Mandatory Use).

The Tax Court achieved a second significant milestone during the 2014-2015 court year: the court closed more cases than were initiated during the court year for the first time since 2000. At the close of the court year, 16,013 Complaints had been docketed or reinstated and 20,720 matters had been closed. This represents a reversal of a 15-year trend in which filings exceeded dispositions, in some years by vast amounts. The court's disposition rate for the 2014-2015 court year is 2,960 cases per Judge, the highest per-Judge disposition rate in the court's history, exceeding last court year's record setting per-Judge disposition rate of 2,641.

Several factors contributed to the court's accomplishment. New case filings decreased approximately 15% as compared to the 2013-2014 court year. The decrease in filings is likely attributable primarily to improvements in the national economy having a positive effect on value for some types of real property, the core issue in the vast majority of cases before the

court. In addition, case dispositions increased approximately 24% over last court year. This is the result of effective case management by our Judges and the streamlined initiation of cases through the efilings system, which frees staff to process judgments. Tax Court Judges, the Clerk of the Court, 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. On the last day of the court year, 42,662 cases were pending in the Tax Court, and the eight Judges assigned to the Tax Court had caseloads averaging 5,332 cases each.

## 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-six years, the court has disposed of over 350,000 cases. By publishing more than 1,270 of its opinions, the court has established a uniform and coherent framework for the resolution of tax disputes in New Jersey. The court's opinions, both published and unpublished, are available on the judiciary's website for a period of two weeks, after which they are collected by Rutgers-Camden Law School for inclusion in its free online library. The development of a body of legal precedents 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 tax conflicts. In addition to deciding tax disputes, Tax Court Judges hear Superior Court cases in which the Judges' expertise in taxation is desirable. Tax Court Judges have helped resolve complex issues relating to taxation and asset valuation in business, matrimonial, foreclosure, condemnation, and other cases.

The 2014-2015 court year began with two judicial vacancies. On September 1, 2013, the Hon. Francine I. Axelrad, P.J.A.D., retired. Judge Axelrad, although assigned to the

Superior Court, Appellate Division, held the position of Tax Court Judge.<sup>1</sup> Her seat remained vacant at the start of the 2014-2015 court year. On July 1, 2014, the first day of the court year, the Hon. James E. Isman, J.T.C., retired after nearly sixteen years in office, creating a second vacancy. During his entire tenure, Judge Isman was assigned to the Superior Court, Atlantic/Cape May Vicinage.

On August 25, 2014, the Hon. Joshua D. Novin, J.T.C., took the oath of office, filling the vacancy created by the retirement of Judge Axelrad. Although Judge Novin was not in office for the entire court year, the per-Judge disposition rate for the 2014-2015 court year was calculated as if he had been on the court for the entire court year. On the last day of the 2014-2015 court year, Judge Isman's seat remained vacant, although the Governor's nomination of the Hon. Mark Cimino, J.T.C., to the seat had been confirmed by the New Jersey Senate. Judge Cimino filled the vacancy upon the administration of his oath of office on July 1, 2015, the first day of the 2015-2016 court year.

In addition to the eight Judges assigned to the Tax Court, during the 2014-2015 court year, one Tax Court Judge was assigned to the Superior Court, Appellate Division, and two Tax Court Judges were assigned to Superior Court trial divisions. In this way, the court contributed to the disposition of cases by the judiciary overall.

As of the last day of the court year, the eight Judges assigned to the Tax Court were: Presiding Judge Patrick DeAlmeida, Judge Vito L. Bianco, Judge Mala Sundar, Judge Joseph M. Andresini, Judge Christine M. Nugent, Judge Mary Siobhan Brennan, Judge Kathi F. Fiamingo, and Judge Joshua D. Novin. Judge Mark Cimino, although confirmed by the New Jersey Senate, had not yet taken his oath of office. The Judges maintained chambers and heard cases in Hackensack (Judge Andresini), Newark (Judge Nugent, Judge Fiamingo, and Judge

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<sup>1</sup> Judge Axelrad is now serving on recall in the Superior Court, Chancery Division, Family Part, Camden Vicinage.

Novin), Morristown (Judge Bianco), and Trenton (Presiding Judge DeAlmeida, Judge Sundar, and Judge Brennan). Each Judge is designated to hear local property tax cases from specific geographic areas. These cases are assigned according to the location of the property at issue. Cases concerning State taxes are individually assigned by the Presiding Judge.

Table 1 categorizes filings and dispositions for the 2014-2015 court year. The analysis represents Tax Court cases only and does not include Superior Court cases or miscellaneous tax applications handled by Tax Court Judges. An examination of the table shows that the vast majority of the court’s cases, 99%, involve local property tax. The remaining 1% 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 small in number, these cases tend to be complicated and often involve complex legal questions that require significant judicial resources.

TABLE 1  
TAX COURT OF NEW JERSEY  
CATEGORIES OF CASES FILED  
COURT YEAR 2014-2015

<b>A. Cases filed by general category</b>		
Local property tax cases	99%	15,791
State tax and Equalization Table cases	1%	222
Total	100%	16,013
<b>B. Local property tax cases filed during the court year</b>		
Regular cases	63%	9,874
Small claims cases	37%	5,917
Total	100%	15,791
<b>C. State tax and Equalization Table cases filed during the court year</b>		
State tax cases (other than Homestead Rebate & related cases)	85%	189

Homestead rebate & related cases	14%	31
Equalization Table cases	1%	2
Total	100%	222

More detailed Tax Court statistics for the 2014-2015 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 the 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 five 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.

During the court year, the Management Office worked closely with the Judiciary's business analysts and IT unit to develop and implement eCourts Tax. While two case management teams continued to be responsible for docketing, screening, data processing, calendaring, records management and administrative services, electronic filing required significant revisions to the policies and procedures currently in place. A priority for the management office was a comprehensive review of the court's operations and subsequent implementation of changes to accommodate electronic filing. The result was improved efficiency in operations including a reduction of data entry by staff, cases being docketed sooner, a reduction in costs for paper, postage, file folders and hourly staff, and notices and judgments being issued electronically.



To assist users with navigating eCourts Tax, the Tax Court website includes links to instructions and information regarding the electronic filing program. Additionally, various reports and information are available to provide timely and efficient service to litigants and the public. For example, the court provides reports on the judgments entered each month and new cases docketed. Other information available on the court's website includes: published and unpublished Tax Court 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 the State's twenty-one county boards of taxation are also available on-line.

#### IV.

#### CASELOAD

##### A.

#### FILINGS AND DISPOSITIONS

Table 2 in the Appendix (page a) summarizes the history of filings and dispositions of Tax Court cases since court year 1984-1985. At the beginning of the 2014-2015 court year, the Tax Court had an inventory of 47,209 cases. Tax Court cases docketed during the court year totaled 16,013 and an additional 160 previously closed cases were reinstated. Thus, the aggregate total number of cases in inventory was 63,382. Dispositions for the court year totaled 20,720 cases, resulting in an inventory of 42,662 cases at the end of the court year.<sup>2</sup> As noted above, the Tax Court Judges cleared the court's calendar for the first time since the court year ending June 30, 2000. The court resolved approximately 10% of the caseload pending at the beginning of the court year. The inventory of cases at the close of the court year constitutes

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

approximately two years of dispositions at the current rate of disposition. That is consistent with our objective of closing standard track cases within eighteen months to two years after filing. As of the last day of the 2014-2015 court year, approximately 41% of the court's caseload was 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 dramatic increase in case filings in the court years 2006-2007 through 2013-2014. Although we have experienced our first significant decline in case filings since the 2006-2007 court year, our docket continues to have many unresolved older cases filed during recent peak filing years. The Tax Court Judges are redoubling efforts to resolve those cases.

B.

#### PRODUCTIVITY

Table 3 in the Appendix (page b) indicates the number of dispositions per Tax Court Judge per year for the past sixteen years. Dispositions per judge in the past ten court years (2005-2006 through 2014-2015) have been greater than they have been in any other court year since the establishment of the Tax Court. The 2014-2015 court year saw a record high per-Judge disposition rate. 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 the challenge of high caseloads after several years of peak 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 through 28 of the New Jersey Tax Court Reports. The published opinions reflect a fraction of the written and oral opinions issued by Tax Court Judges during the 2014-2015 court year. A description of the most significant Tax Court opinions, as well as significant published opinions of appellate courts, follows.

C.

DECISIONS

1. SUPREME COURT OF THE UNITED STATES

During the 2014-2015 court year, no petition for certiorari was filed with the Supreme Court of the United States in a case that originated in the Tax Court.

2. SUPREME COURT OF NEW JERSEY

At the start of the 2014-2015 court year, several petitions for certification were pending before the Supreme Court of New Jersey in cases that originated in the Tax Court. During the court year, two additional petitions for certification were filed. As of June 30, 2015, the Supreme Court denied two petitions for certification, dismissed one petition for certification, and granted one petition for certification. The Court issued one opinion in a matter that originated in the Tax Court:

A. United Parcel Serv. General Servs. Co. v. Director, Division of Taxation  
220 N.J. 90 (2014)

The Court affirmed lower court determinations that the Director, Division of Taxation improperly exercised his discretion when he denied an application for waiver of late payment penalties arising from an assessment of Corporation Business Tax where the taxpayers had a pending judicial proceeding based on a good faith argument that they were not required to pay the tax. In addition, the Court affirmed lower court determinations that the Director improperly assessed a 5% amnesty penalty on the taxpayers, given that the amnesty statutes did not authorize the imposition of a penalty on taxpayers who filed timely tax returns and paid all reported tax liabilities prior to being assessed tax after an audit.

3. SUPERIOR COURT, APPELLATE DIVISION

During the 2014-2015 court year, appeals from twenty-three Tax Court decisions were filed with the Superior Court, Appellate Division. Table 4 (page c) provides the number of Tax Court cases appealed to the Appellate Division over the past twenty-nine years. Table 5 (page d) shows the disposition of Tax Court cases by the Appellate Division during the 2014-

2015 court year. Appellate Division opinions in appeals from Tax Court 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 2014-2015 court year in cases that originated in the Tax Court included:

**A. Donato Clemente v. Township of South Hackensack**  
28 N.J. Tax 337 (App. Div. 2015)

The Tax Court correctly concluded that the valuation of a commercial bakery with a retail component and municipal approvals to operate a restaurant must rely on evidence of comparable sales with a similar highest and best use. Sales of properties with light industrial uses without approvals for retail operations are not credible evidence of the true market value of the subject property.

**B. Morris Cohen v. Director, Division of Taxation**  
\_\_\_ N.J. Tax \_\_\_, 2015 N.J. Tax Lexis 10 (App. Div. 2015)

The holding in Koch v. Director, Div. of Taxation, 157 N.J. 1 (1999), does not require the Director, Division of Taxation, to increase an accumulated adjustments account of a taxpayer's S corporation to account for S corporation losses which did not result in a New Jersey income tax benefit.

**C. Elizabeth Center Apartments Urban Renewal v. City of Elizabeth**  
28 N.J. Tax 280 (App. Div. 2014)

Non-deed restrictions that created and continue to maintain a cooperative corporation's apartment complex as a source of low to moderate income housing have resulted in a unique and limited market in which to determine the true value of the real property. As a result, the cooperative sales comparison approach based upon the sales of membership certificates within the cooperative property, rather than the income approach, is the proper method for determining true value.

**D. Claudette Lugano v. Director, Division of Taxation**  
\_\_\_ N.J. Tax \_\_\_, 2015 N.J. Tax Lexis 13 (App. Div. 2015),  
petition for certif. pending

Taxpayer's registration as a domestic partner of decedent with the decedent's employer did not fulfill the statutory requirements of the New Jersey Domestic Partnership Act. Parties must register their domestic partnership with the appropriate government officials in accordance with the statute to qualify as domestic partners under New Jersey law. As a result, taxpayer is not entitled to exemption from transfer inheritance tax as a Class A beneficiary of decedent. In addition, benefits paid under the Federal Reserve Bank Pension system to

taxpayer are not exempt from the tax under a statute applicable to federal employees enrolled under Civil Service Retirement Act.

**E. Orient Way Corp. v. Township of Lyndhurst**

28 N.J. Tax 272 (App. Div. 2014), certif. denied, 220 N.J. 574 (2015)

A taxpayer who assumed responsibility for the remediation of contaminated industrial property it intended to redevelop is not precluded from seeking a reduction in the assessed value of the property to account for the contamination. The incidental use of the property by an entity not responsible for the contamination, not related to the polluters of the property, and which does not contribute to the contamination, while awaiting approval of a remediation plan does not preclude a reduction in the assessed value to account for anticipated remediation costs. In addition, a government-approved remediation plan is not a necessary predicate for the consideration of contamination when determining assessable value. Finally, an arm's length sale of contaminated property to a purchaser intending to remediate the property and aware of an estimate of remediation costs is credible evidence of the true market value of the property as contaminated and may be used to set the assessment for the property for local property tax purposes.

**F. Residuary Trust A u/w/o Kassner v. Director, Division of Taxation**

\_\_\_ N.J. Tax \_\_\_, 2015 N.J. Tax Lexis 11 (App. Div. 2015)

The square corners doctrine precludes the Director from asserting that a resident testamentary trust created by will of a New Jersey domiciliary is subject to income tax on undistributed trust income, absent ownership of assets in the State. The Director's assessment is contrary to longstanding public advice issued by the Director on which taxpayers were entitled to rely.

4. TAX COURT

Published Tax Court opinions are reported in the New Jersey Tax Court Reports. As of the date of this report, there are twenty-seven complete volumes of the New Jersey Tax Court Reports and a twenty-eighth volume which is partially complete.

(1) LOCAL PROPERTY TAX CASES

The following published opinions of the Tax Court concerning local property taxes were among the most significant of the 2014-2015 court year:

A. **440 Rt 17 Ptrns, LLC v. Borough of Hasbrouck Heights**  
28 N.J. Tax 241 (Tax 2014)

The appeal-limitation provision of N.J.S.A. 54:4-34 is not applicable where the assessor's request for income and expense information was sent to the taxpayer within 45 days of the January 10<sup>th</sup> statutory deadline for submitting the assessor's assessment list to the county board of taxation. The fact that the assessor was given an informal extension of the January 10<sup>th</sup> deadline does not change the outcome, because the taxpayer was not provided notice of an extended deadline that a formal action of the county board granting an extension would otherwise provide.

B. **AHS Hospital Corp. v. Town of Morristown**  
\_\_\_ N.J. Tax \_\_\_, 2015 N.J. Tax Lexis 12 (Tax 2015)

In a case of first impression, the court held that the operation and function of a modern non-profit hospital does not meet the criteria set forth in N.J.S.A. 54:4-3.6 for an exemption from local property taxes for property used for hospital purposes. Thus, the tax assessor's denial of an exemption for the property on which Morristown Medical Center is located was affirmed, based on the court's conclusion that the hospital was operated for a profit-making purpose, with limited exceptions to defined areas of the property.

C. **City of Elizabeth v. 264 First Street, LLC**  
28 N.J. Tax 408 (Tax 2015)

Prior written notice to mayor, municipal governing body, county board of taxation, and county tax administrator, and submission of a compliance plan was required before the municipal tax assessor could increase the property tax assessments on 212 Class 4C properties in the taxing district. Application of the square corners doctrine will not bar plaintiff's affirmative claims of discrimination. The overriding policy concerns being advanced by allowing a claim of discrimination to be pursued outweighs the potential pitfalls that municipal tax assessors will ignore the procedural requirements enacted under N.J.S.A. 54:4-23.

D. **Borough of Hamburg v. Trustees of the Presbytery of Newton**  
28 N.J. Tax 311 (Tax 2015)

Use of the property, a church and manse, to store religious artefacts and goods used in charitable mission work was reasonably necessary for the property owner's religious purposes, thereby satisfying the standard for exemption articulated in Roman Catholic Archdiocese of Newark v. City of East Orange, 18 N.J. Tax 649 (App. Div. 2000).

**E. Joan Hays v. Borough of Paramus**

28 N.J. Tax 342 (Tax 2015)

The property owner established that she was the surviving spouse of a 100% disabled veteran who qualified for the veteran's exemption from real property tax under N.J.S.A. 54:4-3.30(b). In addition, the assessor's decision to include in the curtilage, to which the exemption applied, the same area as a typical residential lot was reasonable in the absence of reliable evidence by plaintiff of the land reasonably necessary for plaintiff's enjoyment of the dwelling. Finally, the proportionate interest owned by the deceased veteran as a tenant in common qualified for the exemption available to plaintiff as his surviving spouse. In addition, plaintiff's interest as beneficiary of the trust to which the deceased veteran had devised his interest as tenant in common qualified as "ownership" for purposes of the statute but the interest owned by the plaintiff herself as tenant in common did not qualify for the exemption.

**F. City of South Amboy v. Edyta Karpowicz**

28 N.J. Tax 324 (Tax 2015)

Statutory procedure for curing omitted assessments may not be used to assess property on which the assessor previously placed a \$0 assessment for two tax years because of fire damage, despite fact that the property may have had market value on the relevant valuation dates for those tax years. The City could have, but did not, file a regular appeal challenging the \$0 value placed on the relevant valuation dates if it was felt aggrieved by the assessor's determination.

**G. TD Bank v. City of Hackensack**

28 N.J. Tax 363 (Tax 2015)

Bank branch was not a special purpose property subject to valuation under the cost approach. Although the structure was specifically built to be a bank branch, there was no showing that significant expenditures would be necessary or that it would be economically infeasible for the property to be converted to another use, that it would be imperative to the community that the property be rebuilt as a bank branch were it destroyed, that it was a one-of-a-kind property or that it was uniquely suited to be used as a bank branch.

**H. Methode Electronics, Inc. v. Township of Willingboro**

28 N.J. Tax 289 (Tax 2015)

A Nominal assessment is appropriate for the subject property due to: (1) extensive contamination at the subject and migration of contamination to neighboring properties; (2) presence of extensive remediation and monitoring equipment, including wells, underground pipes, and a concrete vapor cap, on the parcel; (3) severe limitations on the development potential of the property; (4) indefinite duration of continuing remediation and monitoring efforts; and (5) continuing threat posed by emission of toxic vapors from the property.

- I. **New Jersey Turnpike Authority v. Township of Monroe**  
28 N.J. Tax 143 (Tax 2014) and 28 N.J. Tax 158 (Tax 2014), appeal pending

Former farmland purchased by New Jersey Turnpike Authority and transferred to the Department of Environmental Protection to fulfill the Authority's environmental mitigation obligations arising from Turnpike widening project is not exempt from rollback taxes. The Authority is not "the State" or a "local government unit," and does not, therefore, satisfy the requirements for an exemption set forth in N.J.S.A. 54:4-23.8.

- J. **NNN Lake Center, LLC by Onyx Equities v. Township of Evesham**  
28 N.J. Tax 82 (Tax 2014)

A court appointed rent receiver has a sufficient stake in the proper assessment of the real property it has been authorized to operate on behalf of a mortgagee, after a default by the property owner on a promissory note, to file a Tax Court Complaint challenging the assessment on the property for local property tax purposes. As a result of this holding, the court denied the municipality's motion to dismiss the Complaint for want of jurisdiction pursuant to N.J.S.A. 54:3-21.

(2) **STATE TAX CASES**

The following published opinions of the Tax Court concerning State taxes were among the most significant of the 2014-2015 court year:

- A. **Criticare, Inc. v. Director, Division of Taxation**  
28 N.J. Tax 169 (Tax 2014)

The limit on the New Jersey Gross Income Tax credit for taxes paid to a foreign jurisdiction on an individual's income from an S corporation is to be calculated in accordance with the provision of the Corporation Business Tax Act and not with reference to the amount of income actually taxed by the foreign jurisdiction. Specifically, in determining the amount of S corporation income allocated to New Jersey, the allocation provisions of the Corporation Business Tax Act applies.

- B. **Peter De Rosa, Executor v. Director, Division of Taxation**  
28 N.J. Tax 256 (Tax 2015), appeal pending

The court's previous ruling in this matter during the 2014-2015 court year, reported at 28 N.J. Tax 73 (Tax 2014), affirmed the Director's higher assessment of plaintiff's New Jersey Transfer Inheritance Tax, determining that New Jersey law requires tax to be calculated according to the terms of a probated will, and not according to the terms of a subsequent settlement



agreement. After finding that New Jersey law on this issue is clear and unequivocal, the court concluded that plaintiff did not have reasonable cause pursuant to N.J.S.A. 54:49-11(a) and N.J.A.C. 18:2-2.7 for the underpayment of his tax obligation. Accordingly, it was within the discretion of the Director to deny plaintiff reduced interest under New Jersey's 2009 Tax Amnesty program established by N.J.S.A. 54:53-19, and to assess late payment penalties and statutory tax amnesty penalties.

**C. Duke Energy Corp. v. Director, Division of Taxation**  
28 N.J. Tax 226 (Tax 2014)

Utilities taxes paid by taxpayer to North Carolina and South Carolina were not taxes "on or measured by profits or income, or business presence or business activity" and were thus not required to be added back to taxpayer's taxable income in calculating entire net income subject to Corporation Business Tax.

**D. Daniel P. McGlone v. Director, Division of Taxation**  
28 N.J. Tax 65 (Tax 2014)

Three-year limitations period to assess Gross Income Tax began to run when shareholder signed and filed corporation's untimely employer income tax withholding returns. In addition, conclusion of corporation's Chapter 7 bankruptcy proceedings did not relieve shareholder of personal responsibility for corporation's unpaid income tax withholding liability. Finally, the Director was entitled to rely on corporation's reconciliation returns when assessing tax liability.

**E. Morgan Stanley & Co. v. Director, Division of Taxation**  
28 N.J. Tax 197 (Tax 2014)

The taxpayer challenged decision requiring it to add-back to its entire net income subject to Corporation Business Tax interest payments to related parties reported as deductions by the taxpayer. The court concluded that the taxpayer failed to provide sufficient evidence that it is entitled to the "subject-to-tax" exception to the add-back requirement. In addition, the court held that the exception to the add-back provision for add-backs that are "unreasonable" requires the taxpayer show more than that the interest payments to related companies had a legitimate, non-tax business purpose and economic substance.

**F. PPL Electric Utilities Corp. v. Director, Division of Taxation**  
28 N.J. Tax 128 (Tax 2014)

The Pennsylvania Gross Receipts tax is an excise tax and not a franchise tax and therefore is not a tax "on or measured by profits or income, or business presence or business activity" and was thus not required to be added back to taxpayer's taxable income in calculating entire net income subject to

Corporation Business Tax. Similarly, the Pennsylvania Capital Stock Tax is a property tax and not a tax based on income or profits, business presence or business activity and therefore no add back is required.

**G. Toyota Motor Credit Corp. v. Director, Division of Taxation**  
28 N.J. Tax 96 (Tax 2014), appeal pending

New Jersey's decoupling from the federal bonus depreciation statute enacted in the wake of the events of September 11, 2001, 26 U.S.C.A. §168, was effective beginning with plaintiff's fiscal year commencing October 1, 2002 and applies to vehicles purchased after September 10, 2001, even if they were purchased prior to the start of that fiscal year. In addition, the holding in Moroney v. Director, Div. of Taxation, 376 N.J. Super. 1 (App. Div. 2005), concerning adjustments to federal basis when determining gain from the sale of property for Gross Income Tax purposes, applies to the calculation of plaintiff's "entire net income" from the sale of its property under the CBT Act. Finally, the Director's removal under the Throw-Out Rule, N.J.S.A. 54:10A-6(B)(6), as amended by L. 2002, c. 40, §8, of plaintiff's receipts sourced to Nevada, South Dakota, and Wyoming from the denominator of the receipts fraction used to determine plaintiff's CBT liability was erroneous.

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 of New Jersey tax laws. The committee fulfills a vital role in its advisory capacity by developing and recommending rule changes affecting the operation of the court. The committee meets quarterly and will next issue a report in January 2016.

Respectfully submitted,

/s/Hon. Patrick DeAlmeida, P.J.T.C.

September 30, 2015

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
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
6/30/02	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
6/30/11	31,390	19,776	15,467	35,699
6/30/12	35,699	15,556	15,457	35,798
6/30/13	35,798	25,364	17,168	43,994
6/30/14	43,994	18,962	15,747	47,209
6/30/15	47,209	16,173	20,720	42,662

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

TABLE 3

TAX COURT OF NEW JERSEY PRODUCTIVITY  
DISPOSITIONS PER JUDGE 2000-2015

Year ended	Pending first day of period	Filings	Dispositions	Pending last day of period	# of Judges (full time equivalents)	Dispositions per Judge
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
6/30/02	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 - DeAlmeida 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; Sundar appointed 7/2009; Andresini appointed 10/2009	1,823
6/30/11	31,390	19,776	15,467	35,699	6 - Hayser retired 10/2010; Nugent appointed 10/2010	2,578
6/30/12	35,699	15,556	15,457	35,798	6 - Brennan appointed 6/2012	2,576
6/30/13	35,798	25,364	17,168	43,994	6.5 - Menyuk retired 1/2013	2,641
6/30/14	43,994	18,962	15,747	47,209	6 - Fiamingo appointed 4/2014	2,625
6/30/15	47,209	16,173	20,720	42,662	8 – Novin appointed 8/14	2,960

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

TABLE 4

## TAX COURT CASES APPEALED TO THE APPELLATE DIVISION 1986-2015

<b>Court Year</b>	<b>Number of Cases</b>
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
2010-2011	27
2011-2012	29
2012-2013	36
2013-2014	33
2014-2015	23

TABLE 5

ACTIONS TAKEN BY APPELLATE DIVISION ON TAX COURT CASES  
COURT YEAR 2014-2015

Action	Number of Cases
Affirmed	12
Dismissed	18
Motion for leave to appeal denied	1
<b>Total Dispositions</b>	<b>31</b>

TABLE 6

TAX COURT CASES PENDING, FILED AND DISPOSED  
COURT YEAR 2014-2015

	<b>Local Property Tax</b>	<b>State Tax</b>	<b>Equalization &amp; related cases</b>	<b>Totals</b>
<b>Cases pending as of first day of period</b>	<b>46,564</b>	<b>645</b>	<b>0</b>	<b>47,209</b>
<b>New cases filed during period</b>	<b>15,791</b>	<b>220</b>	<b>2</b>	<b>16,013</b>
<b>Reinstated</b>	<b>160</b>	<b>0</b>	<b>0</b>	<b>160</b>
<b>Subtotal</b>	<b>62,515</b>	<b>865</b>	<b>2</b>	<b>63,382</b>
<b>Cases disposed</b>	<b>20,391</b>	<b>327</b>	<b>2</b>	<b>20,720</b>
<b>Pending</b>	<b>42,124</b>	<b>538</b>	<b>0</b>	<b>42,662</b>

TABLE 7

CHARACTER OF COMPLAINTS FILED  
COURT YEAR 2014-2015

1. Local Property Tax	FILED	REINSTATED
Regular	9,874	112
Small Claims	5,917	48
<b>TOTAL</b>	<b>15,791</b>	<b>160</b>
2. Other than Local Property Tax (STATE)		
Regular	144	0
Small Claims	78	0
<b>TOTAL</b>	<b>222</b>	<b>0</b>
<b>Grand Total</b>	<b>16,013</b>	<b>160</b>

Type of State Tax

Corporation Business	47	
Cigarette	8	
Estate Tax	4	
Gross Income	56	
Gross Receipts	2	
Hotel	1	
Homestead Rebate	8	
Inheritance Tax	8	
Litter Control Tax	2	
Property Tax Reimbursement	23	
Responsible Person Status	1	
Realty Transfer Fee	2	
School Aid	2	
Sales and Use	34	
Use Tax	2	
10-day Deficiency	22	
<b>Total</b>	<b>222</b>	<b>0</b>



TABLE 8

LOCAL PROPERTY TAX COMPLAINTS FILED BY COUNTY  
2007-2015

	6/30/07	6/30/08	6/30/09	6/30/10	6/30/11	6/30/12	6/30/13	6/30/14	6/30/15
Atlantic	148	128	256	374	406	241	472	731	356
Bergen	2,080	2,369	2,761	3,699	3,935	3,486	5,621	3,834	2,698
Burlington	115	160	248	395	424	336	501	303	283
Camden	137	120	158	214	218	255	481	213	154
Cape May	116	176	110	123	104	102	117	65	88
Cumberland	22	32	52	52	51	43	127	173	97
Essex	2,226	2,523	2,743	3,109	3,471	2,985	4,471	3,493	3,612
Gloucester	70	88	111	144	121	190	412	296	159
Hudson	424	522	773	1,105	1,214	735	1,040	749	689
Hunterdon	71	48	68	91	97	70	139	115	89
Mercer	222	180	206	243	374	240	338	252	213
Middlesex	896	901	966	1,248	1,490	1,058	1,645	1,250	1,106
Monmouth	537	848	1,019	1,747	1,433	944	1,736	1,566	1,178
Morris	574	581	797	1,078	1,228	766	1,936	1,251	1,011
Ocean	718	555	722	1,015	876	479	996	659	610
Passaic	757	989	1,456	1,546	1,522	1,443	2,404	1,641	1,375
Salem	24	28	34	41	69	41	72	50	44
Somerset	229	221	316	546	619	384	653	403	392
Sussex	74	111	78	352	329	231	288	178	136
Union	586	573	711	948	1,163	1,077	1,402	1,189	1,393
Warren	41	48	50	77	130	99	205	143	108
<b>TOTALS</b>	<b>10,067</b>	<b>11,201</b>	<b>13,635</b>	<b>18,147</b>	<b>19,274</b>	<b>15,205</b>	<b>25,056</b>	<b>18,554</b>	<b>15,791</b>