

NOT FOR PUBLICATION WITHOUT APPROVAL OF
THE TAX COURT COMMITTEE ON OPINIONS

HACKENSACK CITY,

Plaintiff,

v.

BERGEN COUNTY,

Defendant.

TAX COURT OF NEW JERSEY
DOCKET NO. 012823-1994

Approved for Publication
In the New Jersey
Tax Court Reports

Decided: October 24, 2017

Kyle Weber for plaintiff (O'Donnell McCord, P.C. attorneys).

Santo T. Alampi for defendant (Santo T. Alampi, L.L.C.,
attorney).

ANDRESINI, J.T.C.

This matter comes before the court by way of defendant's motion for Freeze Act relief pursuant to N.J.S.A. 54:51A-8 ("the Freeze Act"). Defendant seeks to freeze a 1994 Bergen County Board of Taxation judgment for tax years 1995 and 1996 in accordance with the opinion issued by the Appellate Division in City of Hackensack v. Bergen County, 405 N.J. Super. 235 (App. Div. 2009). The property that is the subject of the instant matter is commonly known as the Arnold Constable Building, located at 355 Main Street, Hackensack, New Jersey, and identified as Block 34 and Lot 407 on the city's map ("the property").

The specific question raised by the motion is whether the judgment issued by the Bergen County Board of Taxation ("Board") was one finding value or one granting tax exemption for tax year 1994. For reasons set forth more fully below, this court's answer to the stated question is that the Board's judgment was one granting tax exemption only. The court's answer is rooted in the

fact that neither party presented valuation evidence to be considered by the Board. Accordingly, defendant's motion for Freeze Act relief is denied.

I. Procedural History and Findings of Fact

The court makes the following findings of fact based on the parties' submissions and oral arguments pursuant to R. 1:7-4.

This application for Freeze Act relief arises from a matter with a lengthy and complex procedural history. However, the relevant facts are not in dispute. Defendant originally purchased the property in 1975 to be used as its principal administrative office. Defendant relocated its administrative offices in 1988, but continued to use the property as both a storage facility for surplus county equipment, furniture, and records, as well as a food distribution facility for non-profit agencies. As a result of the relocation and the change in primary use from an office space to a storage facility, plaintiff removed the property from the tax exempt list for the 1989 tax year. Defendant successfully defended the property's public purpose use before the Board, which restored its exempt status.

During the tax years 1991 through 1993, the property continued to function as defendant's primary storage facility for equipment, files, records, furniture, vehicles, and other county surplus. Additionally, the property was utilized as the site of various county auctions for the sale of surplus goods and supplies and the parking lot was used by various civic and non-profit organizations in furtherance of their non-profit goals.

In 1993, defendant engaged a real estate broker to sell the property and began removing stored items in preparation for the sale. Consequently, plaintiff's Tax Assessor ("the Assessor") determined that the property was no longer used for governmental purposes and removed the property's tax exemption for the 1994 tax year. Defendant, pursuant to N.J.S.A. 54:4:3-26,

appealed to the Board, the denial of the tax-exempt status and presumably the value¹ of the property. The Board, on September 14, 1994, issued a judgment using code “30C,” “Exempt Property, Intended Use.” Additionally, this judgment reflected the following figures:

	<u>Original Assessment</u>	<u>Judgment</u>
Land:	\$ 788,000	\$ 0
Improvement:	\$ 2,742,000	\$ 0
Total:	\$ 3,530,000	\$ 0

Plaintiff appealed the Board’s decision to the Tax Court. While that appeal was pending before the Tax Court, the Assessor continued to assess the property and the Tax Collector sent tax bills to defendant for all tax years under appeal. Defendant challenged the assessments for tax years 1995 through 1997 before the Board. The Board dismissed the appeals of the 1995 and 1996 assessments as untimely, and granted exempt status to the property for 1997. Defendant appealed the Board’s holdings as to the 1995 and 1996 assessments. Plaintiff appealed the Board’s decision for the 1997 tax year. Defendant also filed a direct appeal of the 1998 assessment and denial of tax exemption by the Assessor, to the Tax Court. In sum, plaintiff appealed the grant of tax exemption for tax years 1994 and 1997 while defendant appealed the dismissal of its appeals for 1995 and 1996, and the assessment for 1998 to this court.

All five appeals were consolidated and tried before the Tax Court. Summary judgment was granted on January 23, 1998, dismissing the 1995 and 1996 appeals for lack of jurisdiction due to untimely filing. The appeals for tax years 1994, 1997, and 1998 were tried on December 11, 1998, and May 24, 1999. In an oral opinion rendered on July 3, 2007, the Tax Court affirmed

¹ The court was not provided with a copy of the 1994 petition of appeal to Board. Accordingly it is unknown whether the issue of valuation was even alleged before the Board.

the judgments of the Board for each tax year. In doing so, the court briefly addressed the application of the Freeze Act to the 1994 judgment and stated that (1) it was premature as there was no final determination regarding the challenged 1994 assessment, and (2) the Freeze Act is intended to apply only to a determination of value not to questions regarding exemption status. The Tax Court also noted that each of defendant's pleadings reserved the right to appeal the valuation; however, valuation was not considered at trial.

Plaintiff appealed the Tax Court's determination with respect to the 1994, 1997, and 1998 matters, while defendant appealed the dismissal and denial of the Freeze Act for 1995 and 1996 tax years. Defendant also sought imposition of the Freeze Act utilizing the judgment for 1994 as the base year. The Appellate Division consolidated all five appeals for consideration. It determined that the "Tax Court's finding regarding the [defendant's] public use of the property in 1994 are adequately supported by the credible evidence in the record." Hackensack, supra, 405 N.J. Super. at 243. Accordingly, it did not disturb the Tax Court's holding the property exempt from taxation for the 1994 tax year. Moreover, the Appellate Division found that defendant's public use of the property was not terminated in 1997 and 1998 and, therefore, the property should remain tax exempt for 1997 and 1998 years as well. Id. at 245.

With respect to defendant's challenge to the 1995 and 1996 assessments, the Appellate Division concluded that the untimely appeals were properly dismissed. Id. at 246-47 (citing Mayfair Holding Corp. v. Township of North Bergen, 4 N.J. Tax 38, 41 (Tax 1982) that failure to timely file a taxpayer complaint is a "fatal defect."). On the issue of defendant's request for application of the Freeze Act to these tax years, the Appellate Division first considered what impact if any, a dismissal for untimely filing would have on such application. The court concluded that the dismissal of the appeal would have no effect on such an application. Id. at 247. However, it

held that the issue of whether the Freeze Act should apply to the Board's judgment for 1994 was not properly before it. Rather, the court "left for the Tax Court the examination of whether the judgment, once final, has fixed the amount of the assessment such that the Freeze Act applies." Id. at 251-52. In so concluding, the court characterized the Tax Court's dual statements in its bench opinion on this issue as (1) procedural and (2) legal. Id. at 247.

Consequently, but seven years later, defendant filed an application before this court on June 24, 2016, seeking application of the Freeze Act for years 1995 and 1996. Defendant makes several arguments in support of its application. First, it avers that that the Board fixed the 1994 assessed value at "\$0" which was affirmed by both the Tax Court and Appellate Division and thus there is now a final judgment for 1994 to which the Freeze Act can attach. Second, defendant argues that Freeze Act relief should be granted because there was no change in use or ownership of the property between 1994, the base year, and the two succeeding years 1995 and 1996. Lastly, it argues that the Assessor, subsequent to the Board's finding for 1994, unreasonably harassed defendant by improperly removing the property from the tax exempt list, the very action the Freeze Act is intended to prevent.

Plaintiff contends that defendant misrepresents the outcome of the 1994 appeal before the Board and its subsequent history with the Tax Court and the Appellate Division. It argues that while the Board's judgment shows a value of "\$0" for the property, the "value" reflects the change to the tax exempt status rather than indicate that the property had a valuation of \$0. Plaintiff further contends that throughout the history of the 1994 appeal no evidence of value was presented to or considered by the Board, the Tax Court, or the Appellate Division. The litigation focused simply on the property's ownership and use in order to determine tax-exempt status not to assess its value. Sans a final judgment on value, plaintiff states, the Freeze Act application is not appropriate.

Oral argument concerning defendant's application for Freeze Act relief was heard on October 14, 2016. At the conclusion of the hearing, this court asked counsel to submit supplemental briefings addressing, (1) whether the valuation of the property was considered by the Board and (2) whether the Freeze Act application is barred by operation of the doctrine of laches. Oral argument in connection with supplemental briefing was heard on December 22, 2016. At that time, neither party was able to show that evidence regarding the property's value was presented to the Board, or that the Board considered the issue of valuation as to the property.

II. Conclusions of Law

A. The Freeze Act is not applicable as there was no determination of value.

Assessors have a statutory duty to obtain a statement from a property owner concerning the claimed exemption at least every three years. N.J.S.A. 54:4-4.4. However, there is no limitation on how often assessors can review claimed exemptions. In fact, New Jersey courts have recognized that each annual property tax assessment is a separate cause of action. Grandal Enterprises, Inc. v. Borough of Keansburg, 292 N.J. Super. 529, 536 (App. Div. 1996) (citing Aetna Life Ins. Co. v. City of Newark, 10 N.J. 99, 103 (1952)); Hackensack Water Co. v. Div. of Tax Appeals, 2 N.J. 157, 162 (1949).

A taxpayer, who/which successfully challenges an assessment before the County Board or Tax Court, may be entitled to application of the Freeze Act for the two subsequent years. "The Freeze Act . . . subject to certain exceptions operates to continue the effect of a Tax Court judgment for a given year for up to two succeeding years." Zisapel v. Borough of Paramus, 20 N.J. Tax 209, 201 (Tax 2002). The statute provides, in relevant part:

Where a judgment not subject to further appeal has been rendered by the Tax Court involving real property, the judgment shall be conclusive and binding upon the municipal assessor and the taxing district, parties to the proceeding, for the assessment year and for the

two assessment years succeeding the assessment year covered by the final judgment.

[N.J.S.A. 54:51A-8].

See also N.J.S.A. 54:3-26 (allowing imposition of the Freeze Act to final county tax board judgments).

The Freeze Act was promulgated to protect taxpayers. The New Jersey Supreme Court explained in City of Newark v. Fischer, 8 N.J. 191, 199-200 (1951) that:

The evil which the “freeze” statute sought to remedy was repeated yearly increases in the assessed value of property, not related to or justified by any changes increasing its market value, and resulting in harassment of the taxpayer, subjecting him to the trouble and expense of annual appeals to the county tax board.

Precedent dictates that exemption determinations, however, do not automatically become conclusive and binding on the exempt status of the properties for the subsequent year. Blair Acad. v. Township of Blairstown, 95 N.J. Super. 583, 592-93 (App. Div.), certif. denied, 50 N.J. 293 (1967). To discern the legislative intent behind the Freeze Act, courts have considered the statutory language, as well as the practical need to review exemptions annually. Most notably, our Supreme Court held that the Freeze Act can be imposed on final judgements of value, but not determinations of exemptions based on statutory language. See Fischer, supra, 8 N.J. at 199.

There are, however, exceptions to the application of the Freeze Act. Specifically, the statute provides that:

The conclusive and binding effect of the judgment shall terminate with the tax year immediately preceding the year in which a program for a complete revaluation or complete reassessment of all real property within the district has been put into effect. If as of October 1 of the pretax year, the property in question has been the subject of an addition qualifying as an added assessment, a condominium or cooperative conversion, a subdivision or a zoning change, the conclusive and binding effect of such judgment shall terminate with said pretax year.

[N.J.S.A. 54:51A-8].

See also N.J.S.A. 54:3-26 (same exception as to final judgements of a County Board of Taxation). Such language indicates that the Freeze Act shall only apply if there is no change in the value of the property after the assessment date. Looking at the statutes as a whole, it is evident that the Freeze Act was intended by the Legislature “to govern the frequency of the appeals as to disputed amount of assessment and not the tax exempt status of real property.” Fischer, supra, 8 N.J. at 199.

Additionally, applying the Freeze Act to exemptions for two subsequent years after the judgment is entered may lead properties to receive a tax benefit after ceasing to be used for a qualifying public purpose. In County of Essex v. City of East Orange, 214 N.J. Super. 568, 576 (App. Div. 1987), the court explained that a tax exemption in one year cannot be binding on a subsequent year because “a property might be exempt in one year but a change in its use could result in a loss of the exemption.” Therefore, “a declaratory judgment that a property is exempt could not automatically be applied prospectively as the use of the property would have to be monitored to ensure there was no material change forfeiting the exemption.” Ibid.

The Appellate Division in Hackensack, supra, before ruling that the issue was not properly before it, addressed the application of Freeze Act to the 1994 judgment. It began by discussing Fischer, supra, where the Supreme Court held that the Freeze Act was intended only for appeals contesting the assessments and “has no application, either by its phraseology or its obvious intent, to determinations of the tax exempt status of real property” 405 N.J. Super. at 249 (quoting from Fischer, supra, 8 N.J. at 200). The court also analyzed various decisions which had held that “a taxpayer seeking an exemption could obtain a review only by filing a conventional tax appeal,” and further that “the Freeze Act makes binding a final judgment with respect to valuation.” Id. at

250 (quoting County of Essex, *supra*, 214 N.J. Super. at 575, and citing Boys' Club of Clifton, Inc. v. Township of Jefferson, 72 N.J. 389, 405 (1977)).

Despite case law indicating that the Freeze Act should only be applied to judgments of value, the Appellate Division decided that it could not conclusively rule that the application of the Freeze Act in this matter was foreclosed. 450 N.J. Super. at 250. It left to this court, on proper application, the examination of whether the Board's 1994 judgment, once final, has fixed the amount of the assessment such that the Freeze Act applies. Id. at 251-52.

In its submissions, defendant argues that the property is entitled to Freeze Act relief because the public use of the property remained unchanged in 1995 and 1996 from that to which it was put in 1994. In support of this argument, it submits a certification of the then Director for the General Services Division of the Department of Public Works for Bergen County (Director), who was directly responsible for the maintenance and operation of the property during 1994 through 1996. The Director certified that the property served primarily as a storage facility for defendant's equipment, files, records, furniture, and other surplus, and also functioned as an auction site during the aforementioned years.

Defendant's argument concerning consistent use of the property from 1994 through 1996 and the Director's supporting certification is of no assistance to the determination of the Freeze Act's application to the 1994 base year. The Board barred defendant's 1995 and 1996 complaints from adjudication on the merits as defendant did not timely file its property tax appeals. The Tax Court and, subsequently, the Appellate Division upheld the dismissals. This court thus does not have jurisdiction to hear the merits of the 1995 and 1996 complaints. The Freeze Act relief is not intended as opportunity for defendant to litigate whether the property is entitled to an exemption from taxation. Defendant is foreclosed from litigating the 1995 and 1996 assessments as well as

the extinguishment of its tax exemption by failing to comply with the requisite filing deadlines. Accordingly, defendant's frequent discussion of the use of the property in 1995 and 1996 within its submissions and during both oral arguments is not relevant to the issue at hand and will not be considered by the court.

When distilled to its essence, the heart of the matter is whether the Board entered a judgment as to the value of the property or simply the exempt-status when it issued its judgment for 1994. The judgment on its face is ambiguous in that it reflects the judgment code "30C," indicating an exemption for public use, while simultaneously entering "\$0" for values of land, improvements, and total. Additionally, the Appellate Divisions wrote that "[t]he assessment was fixed at '\$0' based on the determination that no change occurred." Hackensack, supra, 405 N.J. Super. at 251. Does this phrase relate to the defendant's use of the property in 1994, 1997 and 1998? If so, it would go to the issue of tax exemption not value. On the other hand, does the phrase indicate that the Board set the value of the property at "0"? If so, that would go to a determination of value.

Defendant avers that there was, in fact, a determination of value by the Board. It argues that the Board entered the value "\$0" on the judgment purposely, and while a determination of value at "\$0" is unusual, such is the Board's determination. Defendant further argues that plaintiff had the opportunity to challenge the finding but failed to do so, and is now barred from raising the valuation issue. Conversely, plaintiff states that "\$0" reflects the exemption from taxation and not the assessed value of the property. It further argues that no evidence regarding the value of the property was presented to or considered by the Board, the Tax Court, or the Appellate Division, so there could not have been a judgment as to the value.

As discussed above, the Freeze Act attaches to final judgments of value. “The primary analysis used by the courts for determining whether issues are binding and conclusive is whether the county board of taxation hearing was fully litigated or settled (since a settlement will satisfy this requirement but a procedural disposition will not) by each party.” City of East Orange v. 280 S. Harrison St. Assocs., 16 N.J. Tax 424, 434 (Tax 1997) (citing Township of Springfield v. Weinberg, 178 N.J. Super. 83 (App. Div. 1981)).

Simply stated, in order to have a final judgment as to the value of the property, one or both parties would have to proffer evidence regarding their conclusion of fair market value. Then the conclusions of value would be considered by the Board. The court requested both parties to investigate if such evidence was presented by examining not only the files in their possession but also those of prior counsel, as well as files maintained by the Board. Neither party was able to provide any evidence of value being presented to or litigated before the Board.

Defendant’s arguments to counter the lack of evidence of value, are unpersuasive. To say that a property has a value of zero defies logic. All real property has inherent value. A tax exemption does not strip a property of its value. Rather, it simply relieves a taxpayer from an obligation of paying the tax owed. Being that there is no evidence based on which this court can conclude that the Board considered the fair market value of the property, the court finds the judgment code “30C” entered on the Board’s judgment to be controlling, to wit, the Board was only granting tax exemption to the property. This court further finds that the “\$0” on the judgment reflects the effect of the tax exemption, *i.e.*, zero taxes owed, not value.

Defendant also alleges that the Assessor improperly removed the exempt status of the property despite the Board’s 1994 determination. It asserts that the only purpose of identifying the actual value of the property is to preserve the assessment for when the property is returned to

taxable status and added to the assessment list. Here, Defendant asserts the property should never have been returned to taxable status or added to the tax assessment list for the 1995 and 1996 years and, therefore, there was no reason for the property's value to be identified. In other words, absent the improper actions of the Assessor, the "0" on the 1994 judgment would have simply been carried forward to the subsequent years.

These contentions regarding the assessor's duties in connection with exempt properties are egregiously erroneous. N.J.S.A. 54:4-23 requires that assessors determine the full and fair value of all real property situated in the taxing district, whether taxable or exempt, as of October 1 of the pre-tax year. N.J.S.A. 54:5-23. Further, N.J.S.A. 54:4-27 expressly states that "the assessor shall enter in a separate list a description of all . . . public buildings and other real property exempt from taxation . . . , and shall value such land and buildings . . . at the amount which would be the taxable value if the same were not exempt from taxation in the same manner as other real and personal property, and in each case he shall state the ground of exemption." Moreover, the Handbook for New Jersey Assessors explains that "[a]lthough exempt property is taxed at zero dollars, assessors must determine accurate taxable assessed values so that should exemption cease proper tax payments will be obtained. Also accurate valuing of exempt property ensures the correct basis for an in lieu of payments." See Property Administration-Local Property Division of Taxation, Handbook for New Jersey Assessors, 293 (rev'd 2016). Although the Handbook is not law, it defines the best practices and procedures and is uniformly relied on by tax assessors.

Lastly, defendant's argument that application of the Freeze Act is necessary to effectuate the statute's intent of preventing unreasonable harassment by the Assessor is also unpersuasive. As noted earlier, the Freeze Act was intended as an anti-harassment, pro-taxpayer legislative measure. Fischer, supra, 8 N.J. at 199-200. In this case, there is no indication that plaintiff acted

unreasonably or with intent to harass defendant. As discussed above, a tax assessor is statutorily obligated to request statements concerning the exempt properties every three years, but it not limited to so doing only every three years. Moreover, occasional review of exempt properties is necessary to ensure that properties receiving tax benefits are so entitled. A tax assessor thus, has the right to review the exempt properties each year. A taxpayer has the equal right to appeal the assessor's determination each year. Here, defendant was remiss in not filing the 1995 and 1996 timely appeals. Such failure cannot be cured by blaming the Assessor in a Freeze Act application process without proof of a final value determination for a base year.

B. The doctrine of laches does not apply to this application for Freeze Act relief.

Plaintiff notes to the court that the taxpayer waited over seven years after the Appellate Division's February 9, 2009 opinion on the 1994 base year to file this motion. At the time the motion was filed, twenty-two years had passed since the initial 1994 complaint was filed. Plaintiff contends that defendant has no justification for waiting seven years to file a routine Freeze Act application. Moreover, plaintiff maintains that it had justifiable reason to believe that any claim under the Freeze Act had been abandoned based on the delay and that it suffered prejudice due to the delay. Specifically, new attorneys are involved, litigation files have been lost or destroyed, and there is a general unavailability of relevant evidence. Lastly, plaintiff contends that it is additionally prejudiced due to the unpaid tax bills for 1995 and 1996.

In contrast, defendant alleges that the delay in filing the application was not prejudicial to either party and, in fact, the inaction was the result of ongoing discussions in an attempt to resolve the matter. It also notes that plaintiff did not attempt to execute the judgment despite the large amount of tax owed.

“Within the Freeze Act there is no specified time limitation, after entry of base-year judgment, to seek affirmative relief; nor is there any such time limitation in any other legislation or court rule.” Jack Nissim & Sons, Inc. v. Township of Bordentown, 10 N.J. Tax 464, 468 (Tax 1989). Since there is no applicable statute of limitations, the court must consider the application of the doctrine of laches. The doctrine of laches is an equitable remedy that is “invoked to deny a party enforcement of a known right when the party engages in an inexcusable and unexplained delay in exercising that right to the prejudice of the other party.” J&J Snack Foods Sales Corp. v. Director, Div. of Tax, 27 N.J. Tax 532, 555 (Tax 2013). A party asserting laches must show that “the delaying party had sufficient opportunity to assert the right in the proper forum and the prejudiced party acted in good faith believing that the right had been abandoned.” *Ibid.* Further, when determining whether to exercise its equitable power with respect to laches, a court should consider the length and reason for delay, as well as any changes in conditions of either or both parties during the delay as the most important factors. Lavin v. Board of Education, 90 N.J. 145,152-153 (1982).

Defendant’s Freeze Act application has undoubtedly been delayed for an excessive amount of time. However, plaintiff’s contention that it would suffer prejudice because of its belief that any claim under the Freeze Act was abandoned and the unpaid tax bills is not convincing. First, at oral arguments both parties represented that there were ongoing discussions in an attempt to resolve this matter. More importantly, however, plaintiff has not shown that the passage of time has caused it prejudice. Therefore, defendant’s Freeze Act application is not necessarily barred by the doctrine of laches.

III. Conclusion

For the reasons stated above, defendant's application for Freeze Act relief pursuant to N.J.S.A. 54:51A-8 for tax years 1995 and 1996 is denied.