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THE TAX COURT COMMITTEE ON OPINIONS

BOROUGH OF RED BANK, Plaintiff, v. RMC – MERIDIAN HEALTH, Defendant.	:	TAX COURT OF NEW JERSEY DOCKET NOS. 000007-2016 000008-2016 Approved for Publication In the New Jersey Tax Court Reports

Decided: July 25, 2018

Martin Allen and Kevin A. MacDonald for plaintiff
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Susan Feeney and Farhan Ali for defendant
(McCarter & English, L.L.P., attorneys).

SUNDAR, J.T.C.

This opinion decides defendant's summary judgment motions seeking dismissal of the above captioned complaints filed by plaintiff taxing district. Defendant contends that the court lacks subject matter jurisdiction over the complaints because they seek to impose omitted assessments on defendant's property for tax years 2014 and 2015 based solely on a trial court's decision in AHS Hosp. Corp. v. Town of Morristown, 28 N.J. Tax 456 (Tax 2015). Defendant argues that the controlling statute is N.J.S.A. 54:4-63.26, which by its plain language, does not authorize imposition of omitted assessments for two tax years.

Plaintiff ("Borough") argues that its request to impose assessments under the general omitted assessment law is legally permissible, as is its right to use this procedure to appeal the Borough's assessor's failure to impose such assessments. The Borough also opposes the motions

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as premature since discovery on whether defendant is entitled to a local property tax exemption for tax years 2014 and 2015 is incomplete.

For the reasons set forth below, the court finds that under the plain language of the controlling statute, N.J.S.A. 54:4-63.26, there must be a demonstrated change in use as a condition precedent for a local property tax exemption to cease, after which the tax must be imposed on a pro-rated basis. The Borough's reliance on AHS Hosp. Corp., and unrelated litigation in which the court denied tax exemption to an unrelated hospital, as a basis for its "belief" that defendant must be taxed for 2014 and 2015 under the general omitted assessment law, does not satisfy the statutory requirement of N.J.S.A. 54:4-63.26. In light of this conclusion, the court need not decide whether, after cessation of the exemption, an assessment can be imposed only in the tax year of the exemption cessation, or for the "next succeeding year" as allowed in the general omitted assessment law. The court therefore dismisses the Borough's appeals.

FACTS

For tax years 2014 and 2015, defendant Meridian Hospitals Corporation, as successor to Riverview Medical Center (defendant hereinafter being referred to as "RMC"), owned property identified as Block 9, Lot 33.01 ("Subject"). The Subject was used as a hospital during those two years, and was maintained on the Borough's tax list as exempt from 2011 onwards as Class 15D property. It continues to be classified as exempt for tax year 2018.

In June 2015, the Tax Court decided AHS Hosp. Corp. In the context of that litigation, the plaintiff hospital there had, on the day of trial, moved for partial summary judgment to void the added omitted assessment, and the omitted assessments for the two respective tax years preceding the tax year for which the assessor had imposed a regular assessment on the hospital property. Those assessments had been imposed by the new assessor after his personal observations during

an inspection of that hospital, and a review of his files concerning the exemption claims. The hospital argued that the added-omitted, and omitted assessments, were improper because it had previously notified the prior assessor that it was leasing space to for-profit entities, and the new assessor admitted that what he observed were prior existing leases, therefore, there was no "change in use" to validate a reach-back to the two prior two years. The taxing district (through the same counsel in the instant matters), opposed the motion, noting that since equal taxability of all properties is a constitutional requirement, escaping the same (by voiding the added omitted, and omitted assessments for the two preceding tax years) would be an "affront" to our Constitution. Both parties relied on case law relevant to their positions (all of which is also relied upon by the parties herein). By bench opinion, that court "accepted the opposition's arguments," and denied the hospital's motion for "the reasons . . . stated in the opposition to the motion."

The court then separately issued a written opinion finding that "by entangling and commingling its activities with for-profit entities, the [h]ospital allowed its property to be used for forbidden for-profit activities." 28 N.J. Tax at 514. The court therefore found that the hospital "fail[ed] to satisfy the profit test, and [was] thus precluded from exemption." Ibid.[1]

After the written opinion in AHS Hosp. Corp. was issued, the Borough, through its governing body, filed petitions before the Monmouth County Board of Taxation ("County Board") seeking to impose omitted assessments on the subject for tax years 2014 and 2015, and to effectively revoke the exemptions previously granted by the Borough's assessor. There was no proffer of any evidence, including any action by the assessor, nor any asserted change in use or

[1] To merit local property tax exemption, (1) a corporation must be "organized exclusively for" the statutorily recognized charitable purpose; (2) the corporation's "property must be actually and exclusively used for the tax-exempt purpose;" and (3) the entity's "operation and use of its property must not be conducted for profit." Paper Mill Playhouse v. Twp. of Millburn, 95 N.J. 503, 506 (1984) (explaining N.J.S.A. 54:4-3.6, the statute which grants the exemption).

ownership by RMC, to support the allegations contained in the petitions. On December 17, 2015, the County Board entered judgments using code 6B ("hearing waived").

The Borough filed timely appeals thereafter to this court. It alleged as follows:

> By this added/omitted appeal, the Borough . . . seeks a change in classification of the [S]ubject . . . from 15D (exempt) to 4A (Commercial). The [S]ubject is part of the [RMC] Hospital Complex . . . . In the recent Tax Court case of AHS Hospital Corp. . . . , the Court held that Morristown Hospital failed to satisfy the criteria for property tax exemption as set forth in N.J.S.A. 54:4-3.6 and denied the Hospital's application for tax exempt status. Upon information and belief, [RMC's] activities and operations are substantially similar to the activities and operations of Morristown Hospital, i.e. its operations are devoted primarily to for-profit activities. As such, the Borough contends [RMC] is not entitled to tax exempt status pursuant to the decision of the Tax Court in AHS Hosp. Corp. v. Morristown, supra.

RMC filed an answer and counterclaim, asserting, among other defenses, that the complaints were statutorily time-barred; that there was no change in ownership or use of the Subject; and that pursuant to N.J.S.A. 54:4-63.26, the omitted assessments are invalid as a matter of law. It also counterclaimed that the Subject was entitled to exemption under N.J.S.A. 54:4-3.6.

In response to interrogatories propounded by RMC, the Borough claimed to have no documents or communications between the Borough, the assessor's office, the County Board or the Division of Taxation, or any documents maintained by the assessor relative to the grant or denial of the exemption for the Subject. The Borough reiterated the allegations in its complaints (reproduced above) as being the factual basis for its allegation that the Subject was not tax exempt. It further stated that it would also rely on facts and documents obtained through discovery to support its allegation that the Subject is taxable.

ANALYSIS

A. Appropriateness of Summary Judgment Motion

Grant of summary judgment is warranted when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). Conversely, denial is appropriate "where the party opposing the motion has come forward with evidence that creates a 'genuine issue as to any material fact challenged.'" Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995). Thus, the court must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Id. at 540.

Here, the issue is the validity of using the general omitted assessment law and procedure to revoke the Subject's tax exempt status for 2014 and 2015, in tax year 2016, solely as a result of the Tax Court's June 2015 decision in AHS Hosp. Corp. This involves an issue of statutory interpretation, thus, is of legal import. The material facts relative to the legal issue are undisputed. Therefore, summary judgment is appropriate.

B. Assessment of Property Eligible for Exemption

Property is to be valued as of October 1 of the pre-tax year, whether taxable or exempt. N.J.S.A. 54:4-23. Property which is determined to be eligible for tax exemption must however, be identified on a separate list known as the exempt tax list, with its assessed value. N.J.S.A. 54:4-27. See also N.J.A.C. 18:12-3.1 (assessors must enter the "value of" the property on the exempt tax list). This is in contrast to properties which are not exempt from tax, which the assessor must

identify them on a regular tax list. See N.J.A.C. 18:12-2.8. This latter list includes farmland assessed property, albeit as a separate line item. See N.J.A.C. 18:12-2.5.

C. Assessment of Property Which Ceases to be Tax Exempt.

The "exemption cessation" provisions, i.e. assessment of properties which cease to be entitled to a tax exemption are contained in N.J.S.A. 54:4-63.26 to -63.30 (hereinafter "EC Provisions"). Although they are contained within Article 6B which governs the "assessment of omitted property," they were enacted and effective in 1949 (see N.J.S.A. 54:4-63.30), thus, after the "older" omitted assessment provisions (N.J.S.A. 54:4-63.13 to -63.25 of Article 6B) which were enacted in 1947.

The EC Provisions begin with the exemption cessation statute ("ECS"). The ECS, which is titled "Assessment of Omitted Property," states as follows:

> Whenever any real property is by law exempt from taxation and the right to such exemption ceases by reason of a change in use or ownership of such property, the same shall be assessable as omitted property as hereinafter provided. The county board of taxation shall, by resolution, cause such assessment to be made and entered upon the tax duplicate as in other cases of omitted property. Any such assessment shall be entered in the list known as the "Added Assessment List, 19 … " of the municipality wherein said property is located.
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> [N.J.S.A. 54:4-63.26.]

The next statute, N.J.S.A. 54:4-63.27, mandates that the previously exempt property's valuation "for the purpose of the assessment" is the value "previously made" by the assessor, "and listed separately as exempt property," unless modified by the "equalization and revision by" a county board. See also State of New Jersey Division of Taxation, Handbook for New Jersey Assessors, §804.04 (rev'd Aug. 2017) (the value of "[r]eal property which ceases to be exempt is

not revalued by the assessor at the time exemption is lost. The . . . value on the annual . . . Exempt Property List must be continued for the balance of the tax year.").

The next provision is titled "Time when exemption ceased as affecting time of assessment." It specifies the period for the assessment and provides as follows:

> All such property shall be assessed and taxed as follows:
> If the right to exemption ceased in any tax year, the property shall be assessed and taxed as of the first day of the month following the date when the right to exemption ceased, for the proportionate part of the said year then remaining. The amount of tax shall be determined by multiplying the amount which the tax would be if such tax were for the entire year by the number of whole months remaining in the calendar year after the date when the right to exemption ceased and dividing the result by 12.
>
> [N.J.S.A. 54:4-63.28.]

Prior to its 1974 amendment, N.J.S.A. 54:4-63.28 allowed imposition of an assessment as follows: (1) where the "right to exemption ceased" between October 1 of the pre-tax year and before the "following" January 1, the property was to be assessed "as of said January 1 for the whole of the tax year commencing on that date;" and, (2) where the "right to exemption ceased" between January 1 and October 1 "in any year," in which case, the property was to be assessed "as of the first day of the month following the date when the right to exemption ceased." See L. 1974, c. 103, §2. Because "there [was] no assessment for this three-month period" of the pre-tax year, the 1974 amendment was proposed to require tax payment "on an added assessment when a building is completed, a municipally owned building is sold . . . or other exempt property which ceases to be exempt between October 1 of the pre-tax year and January 1 following." See S. Revenue, Fin. and Appropriations Comm., Statement to Assembly No. 411 (Apr. 16, 1974).[2] See

[2] The 1974 law also amended the added assessment statute, N.J.S.A. 54:4-63.2, to provide that where improvements were made to property after October 1 in any year and completed before January 1 following, then instead of imposing an added assessment "as of said January 1," the

also Boys' Club of Clifton, Inc. v. Twp. of Jefferson, 72 N.J. 389, 400, n.4 (1977) (explaining the manner in which N.J.S.A. 6:54:4-63.28 functioned pre-1974, and that it was "amended . . . to provide for the proportionate method of allocating the tax irrespective of the month in which the exemption status terminated.").

In St. Michael's Passionist Monastery v. City of Union, 195 N.J. Super. 608, 610 (App. Div. 1984), the court explained that due to the 1974 amendment, pro-ration could be achieved for any of the three months in the pre-tax year, thus, "if the exemption was lost after October 1 in a given year, a proportionate tax could be claimed for two months (November and December) or one month (December) of that tax year, as the case may be," or for any months in the tax year, if the change in exempt status occurred "after January 1." Id. at 612. But, the court observed, "if a change in tax exempt status occurs before January 1 of the new tax year, and the assessment is intended to apply to the full tax year beginning that January 1, it is not clear that the omitted assessment procedure would have to be invoked," because "no proportionate tax would be involved." Ibid. If the property "had exempt status on October 1 of the pretax year," the ECS (N.J.S.A. 54:4-63.26) "could literally apply to that situation as well as the attempt to levy a proportionate tax for part of a tax year." St. Michael's Passionist Monastery, 195 N.J. Super. at 612. The court concluded that,

> property whose exempt status has been lost prior to October 1 of the pretax year can be put on the regular tax rolls as of January 1 of the following year without utilizing the omitted assessment procedure.

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assessor could impose such an assessment as of "the first day of the month following completion. . . ." L. 1974, c. 103, § 1. Thus, both the added assessment law and the EC provisions were intended to capture tax for the 3-month period of the pre-tax year.

A separate statute, N.J.S.A. 54:4-63.3, had provided for an added assessment on improvements completed between January 1 and October 1 of the tax year, on a prorated basis. These provisions were not amended since its enactment in 1941. The proration language in this statute is similar to the proration language in N.J.S.A. 54:4-63.28, except that the proration uses the assessment amount as opposed to the tax amount.

> The omitted assessment procedure must be used to levy a proportionate tax for less than a full year. If the tax exempt status is lost between October 1 and December 31 of the pretax year, the omitted assessment procedure must also be used.
>
> [Id. at 613-14.]

The case thus interpreted the timing of the exemption loss vis-à-vis the period for imposing an assessment for the tax year the exemption was granted. If the loss of tax-exempt status occurs between October 1 and December 31 of the pre-tax year, or any time after January 1 of the tax year, an omitted assessment can be imposed on a pro-rata basis. If the exemption is lost before October 1 of the tax year, a regular assessment for the following tax year should be imposed.[3] However, if an exemption is lost before January 1 (for instance, on December 31 of the pre-tax year, in which case, the first day of the month following the date of the exemption cessation would be January 1 of the tax year), then a 12-month assessment can be levied without treating it as an omitted assessment.

The next sequential provision is N.J.S.A. 54:4-63.29, titled "Law applicable to property which ceases to be exempt." It provides that unless "as otherwise provided herein," the statutes pertaining to added assessments, (N.J.S.A. 54:4-63.1 to -63.11), as to "the entry of the assessments in the Added Assessment Lists, the preparation of the tax bills, the collection of the taxes, the times for the payment of the taxes and the other procedural provisions," must apply to "assessments made under this act." N.J.S.A. 54:4-63.29. Thus, the EC Provisions are to be procedurally effectuated using the added assessment procedures. See also Handbook for New Jersey Assessors, §801.02 ("[r]eal property which ceases to be exempt because of changes in use, ownership,

[3] The court had raised the possible application of the EC Provisions sua sponte and remanded the case to the trial court as there were no facts to conclude "when the alleged loss of tax exempt status occurred and what change in use caused that change in status." St. Michael's Passionist Monastery, 195 N.J. Super. at 614.

nonprofit status or anything which alters the basis for exemption, may make the property subject to the Added Assessment Law," therefore, "assessor" must notify property owners "[u]pon reinstating formerly exempt property to the tax rolls").

D. Can Omitted Assessments be placed for Tax Years 2014 and 2015 in Tax Year 2016?

The parties agree that the starting point of the analysis is application of the ECS. They however disagree as to its scope and the procedural manner to effectuate the exemption revocation.

RMC contends that the Legislature has provided two specific reasons why a previously exempt property can lose exemption during a tax year, namely change in ownership or a change in use, and has further included a specific methodology for assessing such property, which is by employing the added assessment procedures on a pro-rated basis. Thus, it argues, the general omitted assessment law, N.J.S.A. 54:4-63.11 to -63.25 (or N.J.S.A. 54:4-63.31 to -63.40, the newer or "alternative method"), simply does not apply to instances where a taxing district decides to place an exempt property back on the tax rolls. RMC maintains that the Borough should have filed timely appeals for each tax year 2014 and 2015 if it was dissatisfied with the assessor's grant of exemption for those years and cannot resort to the EC Provisions to circumvent the same.

To the contrary, the Borough argues, the ECS specifically requires previously exempt property to be treated as omitted property when the exemption ceases. Therefore, the Borough claims, its resort to the procedural and substantive statutory provisions of N.J.S.A. 54:4-63.11 to -63.25, or N.J.S.A. 54:4-63.31 to -63.40, is proper.

The statutory scheme of the EC Provisions show that the Legislature intended a property which has ceased being tax exempt due to change in ownership or change in use, must be restored to the tax rolls. This is done by treating the property as if it were omitted from being taxed. The court's research did not reveal any legislative history specifically addressing what was meant by

the phrase "assessable as omitted property" under the ECS. However, it is reasonable to conclude that where a property is intentionally excluded from the regular tax list (due to its inclusion in the exempt tax list), it is deemed "omitted" from being taxed, thus, it is to be treated as an omitted property, which is therefore required to be added back to the regular tax list. See e.g. New York State Realty & Terminal Co., 21 N.J. 90, 97 (1956) ("The theory of the . . . Omitted Assessments Law is to provide means whereby . . . property omitted from the tax rolls through design or inadvertence can be added and included and taxed from the appropriate . . . year in which it was omitted from the tax rolls").

The intent of the ECS was to achieve taxability of property once it ceased being exempt by treating it as if it were omitted from the tax rolls. Therefore, when ECS requires previously exempt property to be "assessable as omitted property," it simply means that the property is to be treated as if it was omitted from the tax rolls, and consequently, be subject to assessment.

Does this mean that a previously exempt property can be assessed in "[a]ny tax year or the next succeeding tax year," as provided under the general omitted assessment law, for purposes of the ECS (in essence as an "omitted omitted" assessment, i.e. an omitted EC assessment which was omitted to be imposed in the tax year when the exemption ceased)?[4] However, before deciding this question, the court must decide a preliminary, but fundamental issue: was there a change in use for the ECS to be even applicable?[5] The ECS plainly requires that there must have been a change in use before an assessment can even be imposed. The very title of N.J.S.A. 54:4-63.28,

[4] See N.J.S.A. 54:4-63.12; 54:4-63.31. See also Borough of Freehold v. Nestle USA, 21 N.J. Tax 138, 147 (Tax 2003) (omitted assessments "may be imposed in the year in which the property should have been assessed or in the next succeeding year."). Thus, an omitted assessment, as a remedy, can be imposed for one of two alternative years: in the year of omission or in the succeeding tax year.

[5] Change in ownership is not at issue here.

"Time when exemption ceased as affecting time of assessment," lends further endorsement of the need for the occurrence of a change. This is in contrast to the general omitted assessment law, where the only condition for imposing an assessment is that a taxable property, which has always been assessed as such, was somehow omitted from being assessed and taxed.[6]

It is undisputed that the Borough relied solely upon the ruling in AHS Hosp. Corp. as a basis for requesting the imposition of omitted assessments for 2014 and 2015. The Borough admits that the Subject was continued to be used and operated as a hospital for those two tax years. It however qualifies this accord by emphasizing that it does not admit that tax exemption is therefore warranted for those years because discovery in this regard is incomplete. Yet, its own responses to RMC's interrogatories were that it has absolutely no documents evidencing any change in use. There was no inspection, observation, or finding by the assessor that the Subject was not being used for non-profit purposes during the 2014 or 2015 tax years, nor that it was vacant or abandoned. Indeed, as of October 1 of each pre-tax year, by granting the exemption, the assessor must have been satisfied that the Subject was entitled to an exemption, thus, also satisfied that there was no change in its use for non-profit purposes.

In effect, then the Borough's instant complaints were filed with the hope that discovery would somehow reveal that the Subject was used for profit-making purposes, which would then justify imposition of omitted assessments. This is plainly evident when the Borough argues that "if [RMC] is violating" the requirements of the tax exemption statute (N.J.S.A. 54:3-4.6), then, "it

[6] Note that where value is placed on a property as of October 1, then its assessment cannot be increased by resort to the general omitted assessment law. Glen Pointe Assocs. v. Twp. of Teaneck, 10 N.J. Tax 598, 600-601 (Tax 1989) (where building was completed September 1984, added assessment for 1985 was improper because "[i]t was not, but should have been, part of the regular assessment made on October 1, 1984 pursuant to N.J.S.A. 54:4-23 . . . "), aff'd, 12 N.J. Tax 127 (App. Div. 1991).

would be retroactively" taxable, but due to the omitted assessment procedure "and Constitution," the Borough could "only . . . go back two years." Such a strategy simply cannot be within the intendment of the ECS especially when the tense used in the statute contemplates that either of the two situations (ownership or use change) as already having occurred, in other words, the specific bases for the exemption no longer exist. The Tax Court's decision in AHS Hosp. Corp. that an unrelated hospital is not entitled to tax exemption because it failed the "profit test," does not satisfy the ECS' requirement that a change in use of the subject property occurred during the 2014 or 2015 tax years. Such a conclusion would not comport with the language and intent of the ECS and N.J.S.A. 54:4-63-28 especially when that court had held "nearly all of the [hospital's] property [was] actually used for hospital purposes." AHS Hosp. Corp., 28 N.J. Tax at 467.

The court is unpersuaded by the Borough's argument that the decision whether a change in use occurred during the 2014 and 2015 tax years must await completion of discovery. This argument would eviscerate the ECS. As RMC correctly argues, the Borough is using the discovery process as a fishing expedition and as an attempt to find support for denial of an exemption. Cf. New York State Realty & Terminal Co., 21 N.J. at 96 (omitted assessments are placed to accomplish equal tax distribution, and "when a substantial basis . . . exists" to impose the same so that tax avoidance is deflected, the same should be permitted) (emphasis added). Here, as is clear from the Borough's allegations in its complaints, there is an unfounded "belief" or supposition that all hospitals operate in the same manner, therefore, this court must presume that RMC should be taxed because the hospital in AHS Hosp. Corp. was denied an exemption. This does not constitute a "substantial basis" for imposing omitted assessments outside the purview of the EC Provisions.

Additionally, such a strategy permits a complete circumvention of the tax appeal process. As of October 1 of the pre-tax year for each of the 2014 and 2015 tax years, the Borough's assessor,

as is required in the performance of his (or her) statutory duties, placed a value on the Subject and deemed it tax-exempt. It is the assessor's constitutional and statutory obligation when valuing property and deciding that a tax exemption is warranted, to make necessary inquiries in this regard. If such an inquiry justifies a conclusion that the property is not entitled to tax exemption because it was not being used for the statutorily permitted non-profit purposes, then the assessor, based on the information available to him or her, can revoke the exemption, impose an assessment under the EC Provisions for any portion of the tax year for which the exemption was granted, and thereafter impose regular assessments. If no such assessment is imposed under the EC Provisions, and the exemption is granted or continued, the Borough must, like any other aggrieved taxpayer, timely file an appeal. If the Borough was under a "belief" that RMC was using the Subject for profit-making purposes, it could have sought a revocation of the exemption by timely filing an appeal.[7] The Borough cannot, now, under the guise of the general omitted assessment law, litigate the propriety of the assessor's grant of exemption for tax years 2014 and 2015. Just as a taxing district is entitled to rely upon the finality of an un-appealed assessment, so too can a property owner rely upon the finality of a tax exemption which was not appealed, until there has been an affirmative change of either ownership or of use.

The Borough argues that barring the imposition of omitted assessments for the prior two tax years under the general omitted assessment law is akin to a violation of the constitutional requirement that every property must be taxed and be equally burdened. However, the court is not barring imposition of an assessment on property which ceased to be tax exempt in a particular tax year. Rather, it is holding that such an assessment must be imposed under, and in compliance with

[7] For tax year 2016, the Borough filed a direct appeal to this court against the Borough's assessor's grant of an exemption on the placed assessment of $70,699,300, making the same allegation as in the instant omitted assessment appeals, quoted above. See infra pp 3-4.

the EC Provisions, which require a fact-based determination to have been made that the property's use changed in the tax year the exemption was granted (or in the 3-month period of the pre-tax year), and not because another unrelated hospital lost its tax-exemption in an unrelated litigation based on facts established therein. Resorting to the general omitted assessment laws to retroactively assess prior tax years is not permissible under these circumstances.

The Borough analogizes a rollback tax in Twp. of Burlington v. Messer, 8 N.J. Tax 274 (Tax 1986), aff'd, 9 N.J. Tax 634 (App. Div. 1987), as support for its position. There, the court disagreed with the property owner that if the activity in the tax year at issue and the prior tax year was the same, then the assessor must prove the change in use, by showing that "in those prior years the land was used differently." Id. at 282-84. The court found this argument meritless because "where a landowner incorrectly receives a farmland assessment, the taxing district could never recapture any of the tax reductions if subsequently the non-agricultural use, no matter what it may be, is not a change," which would be a clear violation of the constitutional or statutory intent. Id. at 284. The court held that where the statute provides for previously qualifying land, when no longer being used for farmland purposes as being subject to rollback taxes, it means that for prior years the preferential assessment was presumptively lawful. Id. at 285. "[T]herefore, when the land subsequently is not applied to an agricultural or horticultural use, by operation of law a 'change in use' has occurred." Ibid. (rejecting the property owner's argument that since the property was qualified farmland for the prior two tax years, the assessor must prove that the land was not being used for farmland purposes for those years before imposing a rollback assessment).

To the Borough, the above holdings translate into justifying a levy of omitted assessments for the 2014 and 2015 tax years in 2016. It argues that one only need substitute the words "exemption," "omitted taxes," and "non-exempt," for the above case to apply here because a tax

exemption, like a farmland assessment, is granted by the Constitution, and RMC is "getting away with unlawfully not paying taxes," which is precisely what the omitted assessment laws were intended to prevent, as does a rollback farmland assessment. Additionally, the Borough argues, the ECS is worded in such a manner that it first states that a property was exempt, then states that it ceases to be exempt due to a change in use, therefore, the "change in use" is not "literal," rather, are words of "general" usage. In other words, per the Borough, if a property is no longer tax exempt, then "by operation of law," a "change in use" has occurred, therefore, "the fact that no change in use has occurred" cannot prevent imposition of the omitted assessments.

The Borough's arguments are unpersuasive. Unlike the rollback statute, our Constitution does not impose, and does not delegate to the Legislature, the ability to impose assessments for prior tax years for previously exempt property.[8] Second, unlike the ECS, the rollback statute specifies that regular tax is imposable "in the current tax year (the year of change in use) and in such of the two tax years immediately preceding, in which the land was valued, assessed and taxed as farmland." N.J.S.A. 54:4-23.8. Clearly, the rollback statute does not condition the imposition of taxes for the prior two tax years based on a change in use in those years. However, the ECS requires a change in use for the exemption to cease, and then permits restoration of the property to the tax rolls as if it were omitted from the same, but for a pro-rated portion of the tax year the exemption ceased.

[8] Article VIII, § 1, ¶ 1(b) of our Constitution provides that the Legislature must enact laws permitting favorable tax treatment for land "which is determined by the assessing officer of the taxing jurisdiction to be actively devoted to agricultural or horticultural use," and further, to subject such land to regular taxes "in the current year and" the prior tax years "not in excess of 2 such years" if the previously farmland assessed property is "applied to a use other than for agriculture or horticulture."

For these same reasons, viz., the disparity in the constitutional and statutory provisions concerning farmland rollback taxes, the Borough's reliance on the phrase "operation of law" in Messer, is unavailing. That phrase simply highlighted the constitutional and statutory mandates of permitting a favorable assessment, and of imposing a regular assessment for two prior years if the land in the current tax year was not being used for farmland purposes. To argue that this phrase, without more, must apply to the instant case, requires the court to deem the phrase "change in use" in the ECS as containing additional language of permitting the imposition of tax for two prior tax years. The court will not extend the holding in Messer beyond its logic and ignore the plain language of the ECS.

There are some superficial similarities in a rollback tax situation and the ECS. A rollback "allow[s] a municipality to recapture some of the tax savings granted to owners of previously qualified farmland by imposing on the owner the full tax burden in the year of the land's application to a non-agricultural use and in the immediately preceding two years." Messer, 8 N.J. Tax at 284. The ECS requires the previously exempt property to pay tax for the tax year and for the pro-rated period for which the exemption ceases due to change in use or ownership. However, rollback taxes are not imposed because a property was "omitted" from being taxed. "[I]nstead, they are 'additional taxes . . . '" which are imposed by using a procedure "under the original" omitted assessment law, "N.J.S.A. 54:4-63.12 et seq." Atlantic City Dev. Corp. v. Twp. of Hamilton, 3 N.J. Tax 363, 368 (Tax 1981). "By requiring the assessor to follow this procedure it did not designate rollback taxes as 'omitted' or 'added' property." Ibid. Yet, the ECS deems a property whose exemption ceases to be treated as a property omitted from the tax rolls.

In sum, the court finds that the Borough's appeals requesting placement of omitted assessments for tax years 2014 and 2015 cannot be entertained. The ECS requires the occurrence

of either a change in use, or change in ownership. Here, there was neither for either tax year 2014 or 2015. Rather, the omitted assessments are sought to be imposed solely due to the ruling in AHS Hosp. Corp., and the Borough's belief that RMC is not entitled to a tax exemption because it operates for profit similar to the unrelated hospital in AHS Hosp. Corp. The court therefore rejects the Borough's argument that "if [RMC] is violating" the requirements of the tax exemption statute (N.J.S.A. 54:4-3.6), then, "it would be retroactively" taxable, but due to the omitted assessment procedure "and Constitution," the Borough could "only . . . go back two years."

In light of the court's decision it is unnecessary to decide RMC's contention that the substantive provisions of the omitted assessment law, to wit, imposing an assessment for the tax year, or the next succeeding year, is impermissible. The court however notes that a plain reading of the EC Provisions does not support imposition of an assessment in a tax year other than the year in which the exemption ceased.[9] N.J.S.A. 54:4-63.28, which ties the period of assessment to the time the exemption ceased does not incorporate, or reference, "in the next succeeding year." See also Emanuel Missionary Baptist Church v. City of Newark, 1 N.J. Tax 264, 269 (Tax 1980) (the ECS "and its companion, N.J.S.A. 54:4-63.28, deal with the consequences of a loss of exemption by reason of a change in use or ownership during the tax year."); 18 Washington Place Assoc. v. City of Newark, 8 N.J. Tax 608, 612 (Tax 1986) ("The exclusive method for restoring previously exempt property to the tax rolls as a result of a mid-year change in ownership or use is set out in" the EC Provisions); Handbook for New Jersey Assessors, §807 (where an exempt property is sold in May of a tax year as a result of which its exemption ceases, then due to a "change in the taxable status, a current year Added Assessment will be placed on the" the current tax year's "Added

[9] The same procedure, i.e., placing an assessment for a portion of the tax year, by including it in the added assessment list on October 1 of the tax year, would apply for the 3-month portion of the pre-tax year (October 1 to December 31).

Assessment List for 7 months" using the "value on the Tax List . . . as is," and the tax owed would be calculated for the remaining 7 months).

On the other hand, in City of Camden v. Camden Masonic Ass'n, 9 N.J. Tax 331 (Tax 1987), aff'd, 11 N.J. Tax 88 (App. Div. 1989), the trial court noted that the assessor who personally inspected property which was abandoned and vandalized, "had the authority to institute proceedings to impose omitted assessments for" the prior two years, where the owner also admitted to non-use of the property for several years. Id. at 339. While that case involved due process principles, and was factually distinct because the property owner stipulated to the lack of use of the property so that neither the trial court nor the Appellate Division had to analyze the EC Provisions, it is nevertheless a recognition that the imposition of an omitted assessment for the tax year or the next succeeding year, may not be unreasonable.[10] Public policy also may support imposing an assessment in the "next succeeding year," if the same was omitted to be placed in the tax year in which the exemption lost. See New York State Realty & Terminal Co., 21 N.J. at 97.

However, as noted above, the court need not decide this issue. The pre-condition for imposing an assessment on previously exempt property is that there was a change in use, which here must have occurred during either the 2014 or 2015 tax years. That condition is not satisfied because a trial court decided that an unrelated hospital, which it found was operating for profit, is not entitled to a tax exemption.

[10] The Borough also cites to International Schools Serv., Inc. v. Twp. of West Windsor, 207 N.J. 3 (2011) (which involved a regular assessment for the year in which the exemption was revoked by the assessor, a 12-month added assessment and a 12-month omitted assessment for the prior two tax years), and to the bench decision in AHS Hosp. Corp., as evidence of a common acceptance by courts that omitted assessments can be placed for the tax year or the next succeeding year, thus, effectively for two prior years. Neither case is persuasive since there was no discussion or analysis of the EC Provisions.

CONCLUSION

For the above reasons, the court grants RMC's motion for summary judgment. The Borough's complaints are dismissed.