LOCAL PROPERTY TAXATION – FREEZE ACT APPLICATION

Tax Court; Ritchie & Page Distrib. Co. v. City of Trenton; Docket No. 001240-2014, opinion by Sundar, J.T.C., decided October 13, 2016; released for publication December 8, 2016. For plaintiff – Michael Schneck (Schneck Law Group, L.L.C., attorney); for defendant – John Dember (Dember Law, L.L.C., attorney).

Plaintiff filed a motion for application of the Freeze Act, N.J.S.A. 54:51A-8, so that the 2014 assessment for the subject lot, a commercial property, which was reduced to $950,000 pursuant to a multi-year settlement, and as to which there was a final judgment, also apply to tax years 2015 and 2016. Defendant ("City") opposed the motion on grounds the successor owner (which was not named on the caption of the Freeze Act application) had no standing to seek Freeze Act relief; post-sale of the subject, the property became tenanted as opposed to its pre-sale status as owner-occupied commercial property; and because the successor owner had failed to respond to the City's assessor's Chapter 91 requests for income information for tax years 2015 and 2016. The court granted the motion as the City did not meet its preliminary burden of showing substantial change in market value from the base year and as of the assessment dates for 2015 and 2016 tax years. Mere allegation of change in use does not satisfy this burden. Nor is the burden obviated by a failure to respond to Chapter 91 requests since the purpose of Chapter 91 information is to set the property's assessment for a particular tax year, and the sanction for non-compliance is the property owner's inability to challenge the validity of the assessment, not a denial of Freeze Act relief.

(8 Pages)

LOCAL PROPERTY TAXATION – DISABLED VETERAN EXEMPTION – DIRECT SUPPORT REQUIREMENT

Tax Court: Township of Galloway v. Lucienne Duncan; Docket No. 014479-2015, opinion by Cimino, J.T.C., decided November 10, 2016. For plaintiff - Thomas Smith; for defendant - Todd W. Heck (Testa, Heck, Scrocca & Testa, P.A., attorneys).

The court held that defendant, a disabled veteran, did meet the legislatively mandated "direct support" requirement that would entitle her to a real property tax exemption. Plaintiff, a neurologist, served at Andrews Air Force Base during Operation Enduring Freedom from 2006 through 2010. Her service included treating gravely injured service members. The court noted the purpose of the statute is to compensate veterans for the experiences of war. The court determined that plaintiff through her service experienced war and satisfied the "direct support" requirement even though she was not collocated on the battlefield.

(24 pages)

LOCAL PROPERTY TAXATION – PROPERTY TAX ASSESSMENT – VALUATION

Tax Court: 1959 Highway 34 L.L.C. v. Township of Wall; Docket No. 007899-2016, opinion by Sundar, J.T.C., decided October 31, 2016. For plaintiff – Paul Tannenbaum (Zipp Tannenbaum Caccavelli, L.L.C., attorney); for defendant – Jason A. Cherchia (O'Donnell McCord, P.C., attorney).

Defendant moved to dismiss the complaint as untimely filed under N.J.S.A. 54:3-21(a)(2), which changed the deadline to file tax appeals in counties participating in the Assessment Demonstration Program ("ADP") to the later of April 1 or 45 days from the date the bulk mailing of notices of assessment is completed. Plaintiff contended that the new statute did not apply because it did not address direct appeals from district-wide revaluations which was undertaken by defendant for tax year 2016, instead only applied to appeals from judgments of a county board of taxation, therefore, its appeal was timely under the May 1 deadline for a district-wide revaluation pursuant to N.J.S.A. 54:3-21(a)(1). Plaintiff alternatively contended that the defendant's Notice of Assessment violated due process and N.J.S.A. 54:4-38.1 which requires inclusion of instructions on how to appeal an assessment. The court found that the new deadline under N.J.S.A. 54:3-21(a)(2) applied regardless of the method used to set the assessment. It however agreed with plaintiff that the instructions on the Notice of Assessment were erroneous since they referenced the Tax Court's website on appeal procedures, however that website only provided a link to the court rules which specified May 1 as the deadline for direct appeals in cases of district-wide revaluations. The court denied defendant's motion to dismiss the complaint.

(14 Pages)

LOCAL PROPERTY TAX – VAUATION OF RESERVOIR – COST APPROACH – COST TRENDING

Tax Court: MERRILL CREEK RES C O PROJ DIRECT v. HARMONY TWP; Docket Nos. 010290-2011, 004562-2012, 004474-2013; opinion by Bianco, J.T.C., decided October 31, 2016. For plaintiff – Frank E. Ferruggia (McCarter & English, LLP; attorneys; Mr. Ferruggia, Daniel P. Zazzali, and Farhan Ali, on the brief); for defendants - Lawrence P. Cohen (Lavery, Selvaggi, Abromitis & Cohen, PC; attorneys; Mr. Cohen, on the brief.

Held: The court affirmed the assessments of a water storage reservoir for each tax year finding that, under the cost approach to value, entrepreneurial incentive should not be included when it is clear that profit was not the primary motivation for developing the subject property. Furthermore, a deduction for functional obsolescence is not improper merely because the reservoir is a regulated entity and its owners may have to maintain excess capacity.

(21 Pages)

STATE TAXATION – CORPORATION BUSINESS TAX – ALLOCATION OF RECEIPTS FROM CREDIT CARD ACCOUNTS – DIRECT SUPPORT REQUIREMENT

Tax Court: Bank of America Consumer Card Holdings v. Director, Division of Taxation, Docket No. 012945-2011; Fleet Credit Card Holdings, Inc. v. Director, Division of Taxation, Docket No. 012947-2011; FIA Card Services v. Director, Division of Taxation, Docket Nos. 012942-2011, 000386-2012, 000387-2012; opinion by Cimino, J.T.C., decided October 6, 2016. For plaintiffs - Richard A. Leavy (Sidley Austin, LLP, attorneys); for defendant - Michael J. Duffy (Christopher S. Porrino, Attorney General of New Jersey, attorney).

Taxpayers are in the credit card business. The issue is the allocation of receipts from credit card accounts for purposes of determining the proper amount of Corporation Business Tax owed by taxpayers. The court held that the interest from New Jersey credit card accounts is fully allocable to New Jersey. The court also held that the interchange generated from transactions of New Jersey credit card accounts constitutes Original Issue Discount, or interest and is also fully allocable to New Jersey. As to fees, the court allocated the fees from credit card accounts in accordance with the Director's regulation, which allocates fifty percent to the location of the account holder. The court also upheld the Corporation Business Tax Act as constitutional.

(76 pages)

INHERITANCE TAX - EXEMPTION – NEW JERSEY ALTERNATE BENEFIT PROGRAM PENSION PROCEEDS NOT EXEMPT

Tax Court: Estate of Phillip J. Smith, Deceased, Judith Heimer, Executor v. Director, Division of Taxation, Docket Number 015163-2013; opinion by Brennan, J.T.C., decided September 28, 2016. For plaintiffs – Matthew E. Moloshok – (Hellring Lindeman Goldstein & Siegal, LLP, attorneys; David N. Narciso, on the briefs); for defendant – Heather Anderson (Christopher S. Porrino, Attorney General of New Jersey, attorney).

Court determined that while the Legislature enacted tax exemption statutes for New Jersey's defined benefit pension programs (the Police and Fireman's Retirement System; the Public Employees' Retirement System; the State Police Retirement System; the Teachers' Pension and Annuity Fund; and the Judicial Retirement System) it did not intend to provide tax exempt status to the State's Alternate Benefit Program pension proceeds. The denial of tax exempt status does not violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, or the "unalienable rights" provision of the New Jersey Constitution of 1947 because there is a rational basis for distinguishing between defined benefit pension plans and defined contribution pension plans based upon vesting differences and differences in distribution of employer contributions.

(18 Pages)

GROSS INCOME TAX – SQUARE CORNERS DOCTRINE – ASSESSMENT OF GROSS INCOME TAX ON INSTALLMENTS OF NEW JERSEY LOTTERY WINNINGS RECEIVED ON OR AFTER JANUARY 1, 2009 FROM A NEW JERSEY LOTTERY PRIZE AWARDED PRIOR TO JANUARY 1, 2009 VIOLATES SQUARE CORNERS DOCTRINE.

Tax Court: Melvin Milligan and Kim Lawton-Milligan v. Director, Division of Taxation; Docket No. 007048-2011; 001337-2012; 000524-2013; 000046-2014; 000202-2015, opinion by DeAlmeida, P.J.T.C., decided September 26, 2016. For plaintiffs - Steven R. Klein (Cole Schotz, P.C., attorneys; Lauren M. Manduke and Elizabeth Carbone, on the briefs, Jeffrey H. Schechter and Geoffrey Weinstein, of counsel); for defendant Director, Division of Taxation - Ramanjit K. Chawla (Christopher S. Porrino, Attorney General of New Jersey, attorney); for defendant Director, Division of State Lottery - Thu N. Lam (Christopher S. Porrino, Attorney General of New Jersey, attorney).

The court held that the Director, Division of Taxation's interpretation of June 29, 2009 amendment to N.J.S.A. 54A:6-11, extending New Jersey gross income tax to installments of New Jersey lottery winnings received on or after January 1, 2009 from a lottery prize awarded prior to January 1, 2009 is entitled to deference. The court concluded, however, that application of the amendment to plaintiffs violates the square corners doctrine. The Director's denial of plaintiffs' claim for a refund of gross income taxes reversed.

(28 Pages)

GROSS INCOME TAX – SQUARE CORNERS DOCTRINE – MANIFEST INJUSTICE DOCTRINE – ASSESSMENT OF GROSS INCOME TAX ON NEW JERSEY LOTTERY WINNINGS FROM A NEW JERSEY LOTTERY PRIZE AWARDED PRIOR TO JUNE 29, 2009 VIOLATES SQUARE CORNERS DOCTRINE – ASSESSMENT OF GROSS INCOME TAX ON PLAINTIFFS' NEW JERSEY LOTTERY WINNINGS WOULD BE MANIFESTLY UNJUST.

Tax Court: Darrell Leger and Nancy Leger v. Director, Division of Taxation; Docket No. 007706-2011, opinion by DeAlmeida, P.J.T.C., decided September 26, 2016. For plaintiffs - Joseph G. Buro (Zipp, Tannenbaum & Caccavelli, LLC, attorneys); for defendant - Ramanjit K. Chawla (Christopher S. Porrino, Attorney General of New Jersey, attorney).

The court held that the Director, Division of Taxation's interpretation of June 29, 2009 amendment to N.J.S.A. 54A:6-11, extending New Jersey gross income tax to New Jersey lottery winnings received on or after January 1, 2009 is entitled to deference. The court concluded, however, that application of the amendment to New Jersey lottery winnings received prior to June 29, 2009 violates square corners doctrine. In addition, the court concluded that assessment of gross income tax on plaintiffs' New Jersey lottery winnings would be manifestly unjust. The Director's denial of plaintiffs' claim for a refund of gross income taxes reversed.

(17 Pages)

GROSS INCOME TAX – SQUARE CORNERS DOCTRINE – ASSESSMENT OF GROSS INCOME TAX ON NEW JERSEY LOTTERY WINNINGS FROM A NEW JERSEY LOTTERY PRIZE AWARDED PRIOR TO JUNE 29, 2009 VIOLATES SQUARE CORNERS DOCTRINE.

Tax Court: Linda M. Harrington v. Director, Division of Taxation, Docket No. 009529-2011; Gerard Solas v. Director, Division of Taxation, 000622-2011; Alan Mooney, et al v. Director, Division of Taxation, 007022-2011; Melanie Jacob et al v. Director, Division of Taxation, 0007023-2011; Oscar Oviedo et al v. Director, Division of Taxation, 007024-2011; Joanne Roth v. Director, Division of Taxation, 007025-2011; Linda M. Harrinton et al v. Director, Division of Taxation, 007027-2011; Robert K. Space et al v. Director, Division of Taxation, 007052-2011, opinion by DeAlmeida, P.J.T.C., decided September 26, 2016. For plaintiffs - William D. Grand (Greenbaum, Rowe, Smith & Davis, LLP, attorneys; Mr. Grand and Steven B. Gladis, on the briefs); for defendant Director, Division of Taxation - Ramanjit K. Chawla (Christopher S. Porrino, Attorney General of New Jersey, attorney); for defendant Director, Division of State Lottery - Thu N. Lam (Christopher S. Porrino, Attorney General of New Jersey, attorney).

The court held that the Director, Division of Taxation's interpretation of June 29, 2009 amendment to N.J.S.A. 54A:6-11, extending New Jersey gross income tax to New Jersey lottery winnings received on or after January 1, 2009 is entitled to deference. The court concluded, however, that application of the amendment to New Jersey lottery winnings from a New Jersey lottery prize awarded prior to June 29, 2009 violates square corners doctrine. The Director's denial of plaintiffs' claim for a refund of gross income taxes reversed.

(11 Pages)

LOCAL PROPERTY TAXES-RECORD SUPPORTS TAXPAYERS' CLAIM THAT PROPERTY IS LANDLOCKED WITH LIMITED DEVELOPMENT POTENTIAL AFFECTING VALUE-JUDGMENT ENTERED REDUCING ASSESSMENTS

Tax Court: Emmet W. and Pamela Acocella v. Cedar Grove Township; Docket Nos. 018890-2010; 016899-2011; 010376-2013, opinion by Nugent, J.T.C., decided September 26, 2016. For plaintiffs - Joseph Sherman (Beattie Padovano, L.L.C., attorneys); for defendant - Joseph McGlone (McElroy, Deutsch, Mulvaney & Carpenter, L.L.P., attorneys)

The court finds that lack of access to taxpayer's vacant property which borders public land, a utility easement and taxpayers' adjacent improved property renders it landlocked. The condition is unaffected by taxpayers' common ownership of the adjacent improved property since no easement by necessity over any adjacent parcel arises where proof of unity of title is absent from the record. The court further finds inadequate proof of the township's alternate highest and best use of the property for a three-lot residential subdivision where the expert assumed access. Because development of the property appears remote the court determines value based on the highest and best use of the property in its present condition as vacant land with impaired development potential. Judgment is entered reducing the assessments.

(Pages 26)

LOCAL PROPERTY TAXATION - TAX EXEMPT PROPERTY – DEFICIENT FILING FEES – APPLICATION OF R. 8:12(c)

Tax Court; Kenneth Fields et al. v. Trustees of Princeton University, Princeton University; Borough of Princeton; Docket Nos. 005904-2014, 007556-2015, 007276-2016; opinion by Bianco, J.T.C., decided May 31, 2016. For plaintiff – Bruce I. Afran; for defendants Trustees of Princeton University and Princeton University – Jeffrey D. Gordon, Alex Paul Genato (Archer & Greiner, P.C., attorneys), and Mark G. Cunha (Simpson Thacher & Bartlett, L.L.P, attorneys); for defendant Borough of Princeton – Martin Allen (DiFrancesco, Bateman, Coley, Yospin, Kunzman, Davis, Lehrer & Flaum, P.C., attorneys).

The Tax Court found that the Rules of Court do not support the compounding fee provisions in exemption challenges that are applicable to "an action to review a real property tax assessment," pursuant to R. 8:12(c). Thus, the Deficiency Notices of April 12 and 14, 2016, were vacated and the filing fees previously paid by plaintiffs in these matters were deemed to satisfy the filing fees required by the Rules of Court.

(12 Pages)

LOCAL PROPERTY TAXATION - INTERVENTION IN REAL PROPERTY TAX APPEALS – STATUTE OF LIMITATIONS

Tax Court: Farmland Dairies, Inc. v. Borough of Wallington, Docket No.009501-2014, 004801-2015, 002499-2016, opinion by Fiamingo, J.T.C., decided June 21, 2016. For plaintiff – Peter L. Davidson (The Davidson Legal Group, LLC, attorneys); for defendant - Paul M. Elias (Bittinger, Elias & Triolo, P.C., attorneys); for movant – Joseph S. Sherman (Beattie Padovano, LLC, attorneys).

Plaintiff, Farmland Dairies, Inc. timely appealed the Borough's alleged over-assessment of its property for the years in question. Movant moved to intervene with the intention to file a complaint alleging that plaintiff's property was under-assessed. Movant's motion was filed after the statute of limitations for such claims, set forth in N.J.S.A. 54:3-21(a), had expired. The court denied movant's motion to intervene, finding that while movant had standing to bring the claim the failure to bring the claim within the applicable statute of limitations, either by the filing of complaints or by way of motion to intervene, was a fatal jurisdictional flaw. Movant's attempt to intervene was not an amendment to timely filed pleadings and alleged a new cause of action. As a result, his complaints did not relate back to the date of filing of the original complaint.

(9 Pages)

LOCAL PROPERTY TAX - LOVAL PROPERTY TAX

Tax Court: Savage Mills Enterprises, L.L.C. v. Borough of Little Silver, Docket No. 008737-2015; opinion by Sundar, J.T.C., decided June 21, 2016. For plaintiff – Robert J. Foss (Foss, San Filippo & Milne, L.L.C.); for defendant – Joseph A. Clark (Dilworth Paxson, L.P.).

Held: Plaintiff filed a complaint in this court challenging the 2015 assessment upon the property it owns in defendant Borough. Included as a separate count was a claim for a partial exemption because a portion of the subject property was occupied by a non-profit charitable entity, which owned the building on the subject property, actually used it for entirely charitable purposes, and was a ground lessee under a 99-year renewable lease. Defendant moved to dismiss the complaint on grounds that this court lacked subject-matter jurisdiction to rule on a contract issue since the 99-year lease agreement required plaintiff to pay any and all taxes on the portion of the subject property owned and occupied by the non-profit entity. Plaintiff cross-moved. The court ruled that plaintiff, as property owner in fee, has standing to assert a claim for partial exemption as part of its challenge to the subject property's assessment under N.J.S.A. 54:3-21. However, standing to claim exemption does not provide entitlement to the exemption. To obtain a partial exemption, the claimant must satisfy all the requirements of the exemption statue, here, N.J.S.A. 54:4-3.6. Plaintiff failed to meet the statutory requisites. The court therefore denied defendant's summary judgment motion in part, and granted plaintiff's cross-motion in part as to plaintiff's standing to claim the exemption; and granted defendant's summary judgment motion in part and denied plaintiff's cross-motion in part as to plaintiff's entitlement to, and grant of, a partial exemption.

(14 Pages)

VALUATION OF REAL PRPERTY - COST APPROACH – HYBRID APPROACH

Tax Court: Palisadium Management Corp. v. Borough of Cliffside Park, Docket No. 005633-2011, 010266-2012, 008940-2013; Carlton Corp. v. Borough of Cliffside Park, Docket No. 005634-2011, 010274-2012, 008943-2013, opinion by Fiamingo, J.T.C., decided May 2, 2016. For plaintiff – Michael A. Paff (Wilentz, Goldman & Spitzer, attorneys); for defendant - Christos J. Diktas (Diktas Gillen, P.C., attorneys).

Plaintiffs, Palisadium Management Corp and Carlton Corp., appealed the Borough's assessment for their property for the years in question. Both lots operated as a single economic unit and the matters were consolidated for purposes of trial. The improvements on the subject property consisted of a building containing a banquet facility and a fitness/health spa facility, as well as a four-story parking garage. The court approved plaintiffs' use of a hybrid approach to valuation, utilizing the sales comparison approach for the banquet facility and an income and expense approach for the fitness/health spa, however, the court found plaintiffs' expert's adjustments were not credibly supported. The court rejected the Borough's expert's use of the cost approach. Neither the superior view enjoyed by the subject property by virtue of his location on a cliff along the Hudson River overlooking the Manhattan skyline, nor the unusual combination of uses located within the structure, qualified as special purpose or unique for which the use of the cost approach was appropriate. Furthermore, the Borough's expert utilized a computer program whose reliability has yet to be proven before any court to calculate his cost estimates, which has been previously rejected by the Tax Court in Forsgate Ventures IX v. Township of South Hackensack, 29 N.J. Tax 28 (Tax 2016) (appeal pending). The assessments were therefore affirmed.

(26 Pages)

CORPORATION BUSINESS TAX – DENIAL OF TAXPAYER'S CLAIM TO EXCEPTION FROM RELATED PARTY INTEREST ADD-BACK REQUIREMENT – DIRECTOR ACTED WITHIN HIS DISCRETION WHEN DETERMINING THAT TAXPAYER FAILED TO PRODUCE CLEAR AND CONVINCING EVIDENCE THAT RELATED PARTY INTERST ADD-BACK REQUIREMENT WAS UNREASONABLE

Tax Court: Kraft Foods Global, Inc. v. Director, Division of Taxation; Docket No. 017974-2009, opinion by DeAlmeida, P.J.T.C., decided April 25, 2016. For plaintiff Craig B. Fields, admitted pro hac vice (Morrison & Foerster, LLP, attorneys, Mitchell A. Newark, on the briefs), for defendant Marlene G. Brown, Senior Deputy Attorney General (Robert Lougy, Acting Attorney General of New Jersey, attorney).

The court held the Director, Division of Taxation did not act unreasonably when he determined that the taxpayer failed to produce clear and convincing evidence that application of the related party interest add-back requirement in N.J.S.A. 54:10A-4(k)(2)(I) was unreasonable, given the facts underlying plaintiff's payment of interest to its parent corporation on Promissory Notes. Parent corporation's use of taxpayer's interest payments to pay parent's bondholders was insufficient to establish "unreasonable exception" to the related party interest add-back requirement where taxpayer has no legal obligation to parent's bondholders and parent's bondholders have no recourse against plaintiff if interest payments are not made or forwarded by parent to the bondholders.

(21 Pages)

LOCAL PROPERTY TAXATION – HIGHEST AND BEST USE CONCLUSION OF TAXPAYER'S EXPERT IS UNSUPPORTED BY THE CREDIBLE EVIDENCE - TAXPAYER COMPLAINT CHALLENGING ASSESMENTS IS DISMISSED FOR FAILURE TO SUSTAIN BURDEN OF PROOF THAT ASSESSMENTS ARE ERRONEOUS.

Tax Court: East Newark Town Center, LLC v. East Newark Borough; Docket Nos. 005820-2008; 000503-2009; 008463-2010; 000727-2011, opinion by Nugent, J.T.C., decided April 5, 2016. For plaintiff - Jeffrey M. Gradone and Michael F. Floyd (Archer & Greiner, P.C., attorneys); for defendant - Paul Tannenbaum (Zipp & Tannenbaum, L.L.C., attorneys).

The court finds inadequate proof in the record to support plaintiff's expert's conclusion that the property achieves maximum productivity from industrial use, particularly where credible evidence that industrial use is physically possible and financially feasible is lacking. Because proofs fail to support industrial use as the property's highest and best use, comparable leases relied on to derive economic rent do not provide competent evidence of value. The court further finds the highest and best use for all years under appeal is holding the property for redevelopment in accordance with the zoning, with the remaining industrial tenancies serving as the interim use of the property. The assessments are affirmed.

(47 pages)

LOCAL PROPERTY TAX – ENVIRONMENTAL CONTAMINATION – VALUE IN USE

Tax Court: ACP Partnership v. Garwood Borough; Docket Nos. 009227-2010; 002452-2011; 000971-2012; 001049-2013; 003566-2014; 000431-2015, opinion by Novin, J.T.C., decided March 22, 2016. For Plaintiff – Kevin S. Englert (The Irwin Law Firm, P.A., attorneys); for defendant – Robert F. Renaud (Palumbo Renaud & DeAppolonio, LLC, attorneys).

The court held that because the environmentally contaminated property possesses a distinct "value in use" to the taxpayer, "normal assessment techniques" will remain an effective tool in deriving the true market value of the property. However, the property's "in use" status does not preclude consideration of its environmental contamination. Thus, the court will apply the holding in Inmar Associates, Inc. v. Borough of Carlstadt, permitting consideration of the costs associated with investigation and remediation of the contamination on the property in determining its true market value. The impact the contamination has upon the property's true market value, if any, and what methodologies should be employed to gauge that impact must be addressed at trial by the environmental and property valuation experts.

(25 pages)

CORPORATE BUSINESS TAX – INTEREST INCOME, ORIGINATION FEES, GROSS PROCEEDS OF SALE ATTRIBUTABLE TO INTANGIBLE (MORTGAGE LOAN) INTEGRATED WITH FINANCIAL CORPORATION'S BUSINESS OF ORIGINATING AND ACQUIRING MORTGAGE LOANS IN THE STATE OF NEW JERSEY SUBJECT TO NJ CORPORATION BUSINESS TAX – INCOME FROM MORTGAGE SERVICING AND PROCEEDS OF SALE OF MORTGAGE SERVICING RIGHTS ARE NOT SUBJECT TO CBT WHERE SERVICES ARE PERFORMED OUT OF THE STATE. APPLICATION OF THROW-OUT RULE AND AMNESTY PENALTY DEEMED IMPROPER.

Tax Court: Flagstar Bank v. Director, Division of Taxation; Docket No. 019335-2010, opinion by Fiamingo, J.T.C., decided March 22, 2016. For plaintiff – Michael A. Guariglia and David J. Shipley (McCarter & English, attorneys); for defendant – Michael J. Duffy (John J. Hoffman, Acting Attorney General of New Jersey, attorney).

The court upheld the determination of the Director, Division of Taxation that interest income, origination fees and proceeds of sale attributable to mortgage loans made to New Jersey borrowers that were originated or acquired by a foreign banking corporation, were subject to the New Jersey Corporation Business Tax (NJ CBT) under N.J.S.A. 54:10A-6(B)(6) ("other business receipts") finding that such income was attributable to an intangible integrated with taxpayer's business carried on in New Jersey. Additionally, the court deemed the Director's decision not to waive underpayment penalties reasonable. The court further found that the application of the Throw-Out Rule of former N.J.S.A. 54:10A-6(B)(6) to remove receipts from the denominator of the receipts fraction was improper. The same constitutional nexus that applied to tax the income of taxpayer in New Jersey would apply to tax its income in every other state in which it engages in the same or similar activity. Further, the imposition of the amnesty penalty under N.J.S.A. 54:53-19(b) was improper where the Notice of Assessment and Final Determination were both issued after the amnesty period established in N.J.S.A. 54:53-19(a) had run.

(29 Pages)

LOCAL PROPERTY TAXATION – DISABLED VETERAN EXEMPTION – DIRECT SUPPORT REQUIREMENT

Tax Court: Krystal & David Fisher v. City of Millville; Docket Nos. 014080-2014, 007736-2015, opinion by Cimino, J.T.C., decided March 21, 2016. For plaintiffs - Todd W. Heck (Testa, Heck, Scrocca & Testa, P.A., attorneys); for defendant - Brock D. Russell.

The court held that plaintiff, a disabled veteran, did not meet the legislatively mandated direct support requirement that would entitle her to a real property tax exemption. Plaintiff served during Operation Enduring Freedom from 2002 through 2003. Her service included preparing and shipping materials from the United States to Afghanistan as part of a Rear Detachment. Plaintiff did not serve in Afghanistan, nor was she exposed to the dangers of the battlefield. By examining the legislative amendments to the statutory provisions allowing the exemption, the court determined the legislature has been narrowing the eligibility for later conflicts by introducing additional eligibility requirements such as direct support.

(17 pages)

GROSS INCOME TAX – RELATOR'S MONETARY RECOVERY FROM SETTLEMENT OF QUI TAM ACTION HE INITIATED UNDER THE FEDERAL FALSE CLAIMS ACT IS TAXABLE INCOME – TAXPAYER NOT ENTITLED TO DEDUCTION FROM TAXABLE INCOME FOR ATTORNEY'S FEES RELATED TO QUI TAM RECOVERY OR FOR CONTRACTUAL PAYMENTS TO OTHER RELATORS WHO SHARED IN QUI TAM RECOVERY.

Tax Court: Anthony Y. Kite v. Director, Division of Taxation; Docket No. 000190-2013, opinion by DeAlmeida, P.J.T.C., decided February 22, 2016. For plaintiff - Steven D. Janel (Law Offices of Steven D. Janel, attorneys); for defendant - Ramanjit K. Chawla (John J. Hoffman, Acting Attorney General of New Jersey, attorney; Carl A. Wohlleben, on the briefs).

The court upheld the Director, Division of Taxation's determination that a taxpayer's monetary recover from settlement of a qui tam action he initiated under the federal False Claims Act, 31 U.S.C.A. §3729, et seq. is an "award" subject to New Jersey gross income tax pursuant to N.J.S.A. 54A:5-1(l). In addition, the court upheld the Director's determination that the taxpayer is not entitled to deduct from taxable income attorney's fees related to his qui tam recovery or contractual payments made to other relators who shared in his qui tam recovery.

(16 pages)

LOCAL PROPERTY TAX – EXEMPTION

Tax Court: New Jersey Turnpike Authority v. Township of Monroe, Docket Nos. 015412-2013; 006364-2014; opinion by Sundar, J.T.C., decided February 22, 2016. For plaintiff – Louis N. Rainone and Megan E. Sassaman (DeCotiis, Fitzpatrick & Cole, L.L.P., attorneys); for defendant – Richard A. Rafanello and Gregory B. Pasquale (Shain, Schaffer & Rafanello. P.C., attorneys).

Held: Property purchased by plaintiff as part of plaintiff's mitigation obligation to the New Jersey Department of Environmental Protection in connection with, and for, a highway construction project is exempt from tax under N.J.S.A. 54:4-3.3b. Although this statute allows exemption based on the status of the owner, such as plaintiff, a State Authority, the exemption is also dependent on use of the property for statutorily authorized purposes. Since property acquisition for mitigation was directly due to, and as a result of plaintiff's Turnpike Widening Project, it qualified as part of a transportation project, and thus, was tax exempt under N.J.S.A. 27:23-12, plaintiff's enabling statute. Therefore, the property is exempt for tax years 2013 and 2014. However, since plaintiff did not timely appeal the loss of exemption for tax year 2012, it is time barred from such relief as part of its summary judgment motion for tax years 2013 and 2014. That defendant's assessor provided an exemption under N.J.S.A. 54:4-3.3b for tax year 2011 does not suffice to grant exemption in the absence of a timely appeal.

(19 Pages)

UNTIMELY TAX APPEALS - FEDERALLY FUNDED NONPROFIT ORGANIZATION TAXPAYER BARRED FROM SEEKING PROPERTY EXEMPTIONS ON YEARS FOR WHICH IT FAILED TO FILE TAX APPEALS WITHIN STATUTORY PERIOD.

Tax Court: Positive Health Care, Inc. v. City of Newark; Docket No. 017739-2011; Positive Health Care, Inc. v. City of Newark; Docket No. 017743-2011; Positive Health Care, Inc. v. City of Newark; Docket No. 017745-2011; Positive Health Care, Inc. v. City of Newark; Docket No. 017747-2011; Positive Health Care, Inc. v. City of Newark; Docket No. 017750-2011; Positive Health Care, Inc. v. City of Newark; Docket No. 017755-2011; Positive Health Care, Inc. v. City of Newark; Docket No. 017758-2011; Positive Health Care, Inc. v. City of Newark; Docket No. 017760-2011; Positive Health Care, Inc. v. City of Newark; Docket No. 017764-2011; Positive Health Care, Inc. v. City of Newark; Docket No. 017765-2011; Positive Health Care, Inc. v. City of Newark; Docket No. 017768-2011; Positive Health Care, Inc. v. City of Newark; Docket No. 017770-2011.
Opinion by Brennan, J.T.C., decided January 27, 2016. For plaintiff - Mary Ann McField; for defendant - Jacek Zapotoczny (Aaron M. Wilson and Lisa J. Jurick, on the brief; Nowell, P.A., attorneys).

Taxpayer sought charitable exemption status for its residential properties in Newark. The city denied the exemption requests and taxpayer timely filed tax appeals in 2011. In 2015, the city conceded the exempt status of the properties for 2011 and 2015 but denied exempt status for 2010, 2012, 2013 and 2014 on the basis that taxpayer failed to file tax appeals for those years. Taxpayer sought leave to amend the 2011 tax appeals to include appeals for years 2010, 2012, 2013, and 2014 tax years. In support of its position, taxpayer argued that, the federal funding of the properties and the HUD deed restriction on the properties barred taxation under the Supremacy Clause of the United States Constitution. The court found that taxpayer's properties were not federal properties and neither taxpayer nor its properties were immune from state and local tax laws. The court denied the motions to amend the complaints to add untimely tax appeals because such appeals would be futile as beyond the statute of limitations and beyond the Tax Court's limited jurisdiction.

(12 pages)

LOCAL PROPERTY TAX – VALUATION OF COMMERCIAL PROPERTY – INITIAL ASSESSMENTS STAND

Tax Court: Forsgate Ventures IX, L.L.C. v. Township of South Hackensack; Docket Nos. 007671-200; 006473-2011; 002984-2012, opinion by Andresini, J.T.C., decided January 26, 2016. For plaintiff - Nathan P. Wolf and Chad Wolf (Law office of Nathan P. Wolf, L.L.C., attorneys); for Defendant - Steven D. Muhlstock (Gittleman, Muhlstock & Chewcaskie, L.P., attorneys).

The court held that the original assessments for the tax years in question stand due to: (1) insufficient data to support the cost estimates utilized in Plaintiff's cost approach valuation; (2) lack of comparable properties to support Defendant's income approach valuation; and (3) insufficient, relevant data for the court to conduct independent analysis as to the value of the subject property.

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