

TAX COURT OF NEW JERSEY



**ANNUAL REPORT OF
THE PRESIDING JUDGE
JULY 1, 2002 – JUNE 30, 2003
including statistics for the years ending
JUNE 30, 2002 AND JUNE 30, 2001**

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PRESIDING JUDGE OF THE TAX COURT OF NEW JERSEY
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This report is submitted to the Chief Justice of the Supreme Court of New Jersey pursuant to N.J.S.A. 2B:13-11. This annual report covers the period July 1, 2002 through June 30, 2003. The last annual report of the Presiding Judge of the Tax Court covered the period July 1, 1999 to June 30, 2000. Thus this report, of necessity and for historical completeness, also includes a report on activities taking place during the court years ending June 30, 2001 and June 30, 2002.

The Tax Court was originally established on July 1, 1979 as a trial court with statewide jurisdiction to review state tax and local property tax assessments. As the Tax Court approaches its twenty-fifth anniversary, its role has continued to grow. New issues arise as laws are amended, taxpayers change the way they do business, and the taxing jurisdictions develop new methods and theories to maintain the flow of tax revenue necessary to support government. Judges of the Tax Court also hears Superior Court cases in which the special expertise of its judges has helped resolve complex issues relating to valuation of assets and business relations.

THE COURT

In the period since the last annual report of June 30, 2000, the Tax Court of New Jersey has continued to hear and dispose of tax controversies by facilitating settlements and rendering opinions and decisions in the cases filed with the court. A review of the statistics over the three-year period detailed in the Appendix and discussed briefly in the section “The Court” reveals a

modest increase in filings and growth in inventory, which is the result of the beginning of a decline in the value of commercial property.¹

At the beginning of October 2000 only four judges, fewer than at any time in the Court's history, were assigned to hear tax cases. At the commencement of the 2000-2001 court year, Judge Francine I. Axelrad was elevated to the Appellate Division, and Presiding Judge Michael A. Andrew, Jr., the last of the original judges of the Tax Court retired. Five of the other Tax Court Judges were, and continue to be, assigned to the trial divisions of the Superior Court.

Judge Andrew, the Court's second presiding judge, served in that capacity from 1995, when the Honorable Lawrence L. Lasser retired, until 2000. He, along with Judge Lasser, leave behind a rich legacy of opinions and administrative procedures, which form the foundation of our current work. Both men possessed knowledge and unique experience in the development of the tax laws of New Jersey. Their cumulative knowledge and insight is sorely missed. It remains for those of us appointed in the succeeding years to build on the foundation that they laid. Nevertheless, the retirement of the last original member of the Court is of more than historical significance in the life of the court. Those of us who worked with the "old originals" will try to pass down to our new colleagues some of the knowledge and experience that they shared with us.

Judge Axelrad was the first Tax Court Judge to be elevated to the Appellate Division. It is a tribute to her skills, experience, work ethic, and intellect that she has been so honored. We would like to think that her training by and association with the Judges of the Tax Court had

1. The bulk of the court's cases (in excess of 90%) are disputes relating to local property tax assessments. The major issue addressed in these cases is the amount of the assessment, which is based on the market value of the property. Because tax assessments tend to lag behind the market, when real property market values increase, taxpayer appeals decrease; when market values decline appeals increase.

something to do with her advancement. In any event, the Tax Court is honored by the recognition that has been accorded to one of its own.

On May 24, 2001 the Court held a special session to remember and honor the work of John J. Hopkins, J.T.C., one of the original members of the court. His written work, like that of Judges Lasser, Andrew, and Axelrad, will remain in the bound volumes of New Jersey Tax Court Reports, but much of what made him a judge and a man will live on in our memory. The transcript of the memorial proceedings for Judge Hopkins is found in the front of Volume 19 of New Jersey Tax Court Reports.

During the 2000 court year, the remaining four judges assigned to the Tax Court were Presiding Judge Joseph C. Small and Judges Roger M. Kahn, Peter D. Pizzuto and Harold A. Kuskin. They continued to dispose of cases at a rate of between 1,000 and 1,200 cases per judge per year. At the beginning of the 2001-2002 court year Judge Vito L. Bianco joined the Court; at the beginning of the 2002-2003 court year Judge Gail L. Menyuk joined the Court.

The Judges maintain chambers and hear cases in Hackensack, Newark, Morristown, and Trenton. Cases are generally assigned to the location closest to the location of the property whose assessment is being challenged or convenient to the taxpayer's attorney's office. With six seasoned judges, the Court is now in a position to dispose of between 6,000 and 7,500 cases per year. With last year's filings of over 6,000 cases and anticipated increased filings due to a continued decline in the commercial real estate market and a number of substantial municipal revaluations – most notably Newark in 2003 – we can anticipate a modest increase in our inventory of cases.

The Court is undertaking a major initiative in automation and implementation of a statewide uniform system of case management, Differentiated Case Management (D.C.M.), that

has been in operation for local property tax cases in Bergen and Hudson counties for eight and three years, respectively. It is anticipated that once fully implemented, the D.C.M. program will increase the efficiency of the six judges now assigned to hear tax cases. It is hoped that additional management office personnel requested to prepare for the planned implementation of state-wide D.C.M., anticipated for January 2005, can be hired in the very near future so that they can put in place all of the procedures required to implement D.C.M.

One avenue for dealing with anticipated increased filings for the 2005 calendar year and later, the assignment of additional judges to the Tax Court, is temporarily foreclosed. Of the twelve authorized Tax Court Judges, six have been temporarily assigned to the Superior Court. One sits on the Appellate Division. Each of the five trial judges has established him or herself in their current assignment and prefers remaining assigned to the Superior Court. Accordingly, I would urge the Governor and Legislature to consider appointing any or all of these highly qualified judges to the Superior Court so that there will be one or more vacancies on the Tax Court to be filled by qualified and experienced (N.J.S.A. 2B:13-6b) individuals at the appropriate time. An alternative would be for the Chief Justice to temporarily assign a qualified Superior Court Judge to the Tax Court for the court year commencing after July 1, 2005.

The following is an analysis of filings and dispositions for each of the three court years covered in this report. The analysis represents Tax Court cases only and does not include Superior Court cases or miscellaneous tax applications handled by the judges of the Tax Court.

Cases filed during the court year ending June 30, 2001

A.	Local property tax cases	94% of total complaints
	State tax and Equalization Table cases	6% of total complaints
B.	Cases filed by general category	
	1. Local property tax cases filed during the court year	
	Regular cases	77%
	Small claims cases	23%
	2. State tax and Equalization Table cases filed during the court year	
	State tax cases (other than Homestead	
	Tax Rebate and equalization table cases)	59%
	Homestead tax rebate cases	40%
	Equalization Table cases	1%

Detailed Tax Court statistics for the 2001 court year can be found in the Appendix.

Cases filed during the court year ending June 30, 2002

A.	Local property tax cases	77 % of total complaints
	State tax and Equalization Table cases	23 % of total complaints ²
B.	Cases filed by general category	
	1. Local property tax cases filed during the court year	
	Regular cases	39%
	Small claims cases	61%
	2. State tax and Equalization Table cases filed during the court year	
	State tax cases (other than Homestead	
	Tax Rebate and equalization table cases)	53%
	Homestead tax rebate cases	46%
	Equalization Table cases	1%

Detailed Tax Court statistics for the 2002 court year can be found in the Appendix.

Cases filed during the court year ending June 30, 2003

A.	Local property tax cases	89 %
	State tax and Equalization Table cases	11 %
B.	Cases filed by general category	
	3. Local property tax cases filed during the court year	
	Regular cases	84%
	Small claims cases	16% ³
	4. State tax and Equalization Table cases filed during the court year	
	State tax cases (other than Homestead	
	Tax Rebate and equalization table cases)	21%
	Homestead tax rebate case	78%
	Equalization Table cases	1%

Detailed Tax Court statistics for the 2003 court year can be found in the Appendix.

2. The substantial increase resulted from a decision to docket a number of cases not previously docketed. The percentage of "Homestead Tax Rebate cases" increased significantly due to the inclusion of NJ Saver Rebate cases and Property Tax Reimbursement cases.

3. The dramatic decrease resulted from a change in the court rules eliminating all but residential and farm properties from the small claims jurisdiction of the Court. See R. 8-11.

THE TAX COURT MANAGEMENT OFFICE

The Management Office is the administrative arm of the Tax Court. It provides the support services necessary for the efficient functioning of the Court. Not only is the office responsible for case flow management, record keeping, and case management functions, necessary to move cases to disposition, it also manages the resources needed to support the Tax Court Judges and support staff in four separate locations. Specifically, the Management Office accepts papers for filing, assigns cases, and prepares calendars and judgments, while responding to attorney and litigant inquiries and providing procedural guidance.

The office is comprised of three case management teams, which perform functions of docketing, screening, data processing, calendaring, records management and administrative services. Each of the teams, at various stages in the litigation process, provides taxpayers, tax attorneys, and tax administrators with information about the filing of complaints, opinions of the court, judgments and other information regarding the review of state and local property tax assessments. The staff of the Management Office also furnishes sample forms, court rules, and pamphlets explaining Tax Court procedures in local property tax and state tax small claims cases.

The Management Office had been ably guided during the past ten years by the Tax Court Administrator, Doris A. DeBiasi, and the Assistant Tax Court Administrator, Lynne Allsop. Ms. DeBiasi retired at the end of 2002. Her legacy to the Tax Court remains in the competence of the staff and effectiveness of the automated systems developed during her tenure with the court.

On March 24, 2003, Diane L. Ailey, previously Civil Division Manager for the Somerset vicinage of the Superior Court, was appointed Clerk/Administrator of the Tax Court. She is the sixth Clerk/Administrator in the Tax Court's twenty-five year history.

During the course of the past several court years, the administrative staff of the Management Office has continued to develop a case processing standards manual. The purpose of the manual is to have available for each employee in the Management Office, in a computer format, each aspect of case processing from the receipt of mail to post judgment tasks, so that each employee has a current work or task reference available at all times. The office has also taken on a project to redesign forms and develop procedural guidelines in a more user-friendly format.

In 1996, the Supreme Court approved a pilot program for Differentiated Case Management (D.C.M.) for local property tax cases in Bergen County beginning January 1, 1997. The program was expanded to Hudson County for local property tax cases beginning January 1, 2000. It was anticipated that D.C.M. would enable the Tax Court to make better use of judicial resources by reserving judges' time for functions requiring a judge's effort.

Our experience with D.C.M. in Bergen and Hudson Counties has been extremely positive. The case manager and members of the management team have performed many administrative tasks that were heretofore handled by the tax judges or a member of the judge's staff. Additionally, case processing has improved even though there has been less judicial involvement. The case disposition rate demonstrates that cases are being resolved in a more timely fashion because there is trial date certainty inherent in the D.C.M. system.

The Management Office is now preparing for statewide implementation of D.C.M. A proposal for statewide implementation was submitted to the Supreme Court Committee on the Tax Court for its review and recommendation. The committee has recommended statewide implementation effective January 2005. The implementation of statewide D.C.M. will increase the uniformity of procedures among the six judges of the Tax Court and free the judges and their

staffs from some of their current administrative (non-adjudicative) functions.

Over the course of the past year, the Tax Court Management Office has made Tax Court opinions available on the Internet home pages of the State Judiciary and the Rutgers-Camden Law School Internet sites. In addition to the internet publication of Tax Court opinions, the Management Office also makes available on the Tax Court's web page the following reports and information: the Annual Report of the Presiding Judge, the Supreme Court Committee on the Tax Court Biennial Report, the rules of the Tax Court, a small claims handbook, all court rules for the D.C.M. program, all D.C.M. forms, a small claims handbook for D.C.M., and all of the Tax Court's standard form interrogatories. The Tax Court Administrator anticipates expanding the use of the Internet by including Tax Court judgment data and all of the Tax Court's forms in the near future. Links to access the state's twenty-one County Boards of Taxation have been constructed and are available on-line.

SUPREME COURT COMMITTEE ON THE TAX COURT

The Supreme Court Committee on the Tax Court is comprised of members of the bench and tax bar as well as representatives of taxpayers' groups, local, county, and state tax administrators, and others concerned with the administration and review of the New Jersey tax laws. The Committee meets quarterly and is chaired by Michael A. Guariglia, Esq.

The Committee fulfills a vital role, in an advisory capacity, of developing and recommending rule changes affecting the conduct of the Court and the litigants who file cases with the Court. Specifically the Committee has reviewed the court rules governing the Tax Court's D.C.M. program and has recommended additional rules and modification of current rules to support statewide implementation of the program. The Committee also reviewed the rules

governing the Small Claims practice of the Tax Court. The Committee comments on proposed legislation, and when necessary, makes recommendations for amendments to the statutes.

The Committee concluded its two-year tenure with the submission of its biennial report to the Supreme Court in January 2004.

CASELOAD

At the beginning of the 2003 court year the Tax Court had an inventory of 8,073 cases. Tax Court cases filed during the court year totaled 6,639. Thus, the aggregate total of cases in inventory was 14,712. Disposition for the court year totaled 5,444 cases, resulting in an inventory of 9,268 cases at the end of the court year.⁴ Due to a 9% increase in filings from the prior court year, the Tax Court Judges were not able to clear the calendar. However, the Court accomplished much by resolving 67% of the pending caseload and by issuing opinions on several notable cases (see section, Standards of Assessment and Legal Principles Utilized By the Tax Court in Local Property Tax Cases and State Tax Cases).

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

Following is a comparison of filings and dispositions of the Tax Court for the past twenty-two years.

Year ended	Pending first day of period	Filings	Dispositions	Pending last day of period
8/31/82	13,227	6,376	12,288	7,315
8/31/83	* 7,311	8,647	9,003	6,955
6/30/84	** 6,299	8,633	9,004	5,928
6/30/85	5,928	6,523	8,012	4,439
6/30/86	4,439	5,310	6,312	3,437
6/30/87	3,437	4,619	4,687	3,369
6/30/88	3,369	4,764	5,629	2,504
6/30/89	* 2,532	6,570	4,627	4,475
6/30/90	4,475	7,901	5,262	7,114
6/30/91	7,114	11,371	6,026	12,459
6/30/92	* 12,402	16,300	9,224	19,478
6/30/93	19,478	14,967	16,560	17,885
6/30/94	17,885	15,223	11,697	21,411
6/30/95	21,411	12,741	17,402	16,750
6/30/96	16,750	9,410	12,075	14,085
6/30/97	14,085	7,954	10,406	11,633
6/30/98	11,633	7,124	9,390	9,367
6/30/99	9,367	6,356	7,005	8,718
6/30/00	* 9,069	5,386	6,702	7,753
6/30/01	7,753	4,815	4,515	8,053
06/30/02	8,053	5,952	5,932	8,073
6/30/03	8,073	6,639	5,444	9,268*

* Adjusted to reflect year-end physical case inventory.

** Beginning July 1, 1983, the Judiciary changed its court year to end June 30, instead of August 31.

APPEALS FROM TAX COURT DECISIONS.

A. SUPREME COURT OF NEW JERSEY

During the 2000-2001 court year, the Supreme Court was presented with thirteen Tax Court cases. The Court denied certification in four cases, granted certification in four cases, and dismissed three cases. One matter was withdrawn by the parties. The Court did not render a decision with regard to two petitions for certification and rendered decisions on three Tax Court cases, GNOC v. Director, Division of Taxation, 167 N.J. 62 (2001), Adamar v. Director, 167 N.J. 601 (2001), and Stryker v. Director, 168 N.J. 138 (2001).

During the 2001-2002 court year, the Supreme Court was presented with eleven Tax Court cases. The Court denied certification in six cases, granted certification in one case, denied leave to appeal in one case, and dismissed one matter. The Court did not render decisions in any Tax Court cases.

During the 2002-2003 court year, the Supreme Court was presented with thirteen Tax Court cases. The Court denied certification in six cases, granted certification in one case, denied leave to appeal in one case, affirmed two appeals and dismissed one. One matter was withdrawn by the parties. The Court rendered decisions in two Tax Court cases, Reck v. Director, Division of Taxation, 175 N.J. 54 (2002) and Southern Jersey Family Medical Centers, Inc. v. City of Pleasantville, 176 N.J. 184 (2003).

One petition for certiorari was filed with the United States Supreme Court, Nelson Fernandes v. Sparta, 538 U.S. 946 (2003). Certiorari was denied in this case on March 31, 2003.

B. APPELLATE DIVISION OF THE SUPERIOR COURT.

During the 2000-2001 court year, appeals were filed with the Appellate Division of the Superior Court from 35 Tax Court decisions. During the court year 2001-2002, appeals were filed with the Appellate Division of the Superior Court from 41 Tax Court decisions. During the court year 2002-2003, appeals were filed with the Appellate Division of the Superior Court from 50 Tax Court decisions. The numbers of Tax Court cases appealed to the Appellate Division over the past twenty-four years are:

1979-1980	11
1980-1981	53
1981-1982	92
1982-1983	84
1983-1984	56
1984-1985	65
1985-1986	51
1986-1987	49
1987-1988	48
1988-1989	44
1989-1990	32
1990-1991	40
1991-1992	49
1992-1993	43
1993-1994	67
1994-1995	84
1995-1996	79
1996-1997	53
1997-1998	71
1998-1999	58
1999-2000	45
2000-2001	35
2001-2002	41
2002-2003	50

During the three years covered in this report, the Appellate Division took the following actions on Tax Court cases:

	<u>2000-01</u>	<u>2001-02</u>	<u>2002-03</u>
Affirmed	25	8	29
Dismissed	13	9	10
Reversed & Remanded	2	5	2
Reversed	1	3	3
Motion for leave to appeal denied	4	8	8
Modified/Final Remands	1	0	4
Total Dispositions	46	33	56

STANDARDS OF ASSESSMENT AND LEGAL PRINCIPLES
UTILIZED BY THE TAX COURT

LOCAL PROPERTY TAX CASES

Local property tax cases generally involve a determination of the value of property for assessment purposes. Value for assessing purposes is fair market value, that is, the price that would be paid by a willing buyer for all of the rights in the real estate, and accepted by a willing seller, if neither were compelled to buy or sell. The fair market value standard is utilized to achieve the uniformity in assessment that is required by the Tax Clause of the New Jersey Constitution. See N.J. Const., art. VIII, ' 1, & 1(a). The court applies the valuation principles required by statute and the Constitution and determines fair market value by application of such of the three approaches to value as may be presented in evidence and deemed appropriate by the Court.

These three approaches are: (1) the sales comparison approach, in which an estimate of market value is derived from the sales prices of comparable properties; (2) the cost approach, which is founded on the proposition that an informed buyer would pay no more for a property than the cost of building a new improvement with the same utility as the subject plus the value of the land; and (3) the income approach, which is predicated on the capitalization of the income the property is expected to generate.

Local property tax cases sometimes involve a claim of discrimination in assessment. In such cases the court follows the legal principles established by our Supreme Court in In re Appeals of Kents, 2124 Atlantic Ave., Inc., 34 N.J. 21 (1961), Murnick v. Asbury Park, 95 N.J. 452 (1984), and West Milford Tp. v. Van Decker, 120 N.J. 354 (1990), as well as statutory provisions granting relief from discrimination contained in N.J.S.A. 54:51A-6 (chapter 123 of the

Laws of 1973).

Examples of the standards of assessment and legal principles utilized by the Tax Court during the court years referenced in this report may be found in the local property tax opinions approved for publication in the New Jersey Tax Court Reports during those years. These opinions are representative of the tax cases heard during that period.

The local property tax opinions deal with such factual and legal issues as the valuation of an exceptionally large office complex, assessments for municipal payroll taxes, valuation of a high-tech telecommunications facility, the applicability of the Freeze Act (N.J.S.A. 54:3-26 and N.J.S.A. 54:51A-8), the failure to comply with an assessor's request for income information (Chapter 91 motions, N.J.S.A. 54:4-34), highest and best use, farmland assessment, Historic Site and Green Acres tax exemptions, inappropriate use of a sales comparison approach, the validity of R. 8:7(e) which sets time limits for the filing of chapter 91 motions, and whether a sale of the subject property is a reliable indicator of fair market value.

Among the local property tax opinions issued during the court years covered by this report were the following. Alpine Country Club v. Borough of Demarest, 354 N.J. Super. 587 (App. Div. 2002), involved a golf course. The Appellate Division reversed and remanded a determination by the Tax Court of the value of an 18-hole golf course. As his basis for determining value, the Tax Court judge had used a "rule of thumb" derived from the testimony of a fact witness, an attorney-developer, as to the formula he used to determine the relationship between what he expected to receive for a finished lot and what he would pay for the entire undeveloped tract. The Appellate Division held that lay testimony may not usurp the function of an expert. The witness was only offered as a fact witness, there was no expert's report, and the taxpayer's counsel could not effectively cross-examine him or present a rebuttal witness as to the

“rule of thumb” he used.

Pepperidge Tree Realty Corp. v. Kinnelon Borough, 21 N.J. Tax 57 (Tax 2003), involved the use of comparable sales in expert testimony for the purpose of valuation. The Tax Court affirmed the assessments where the reliability of the comparable sales testified to by the plaintiff’s expert was undermined by the cumulative effect of several separate problems, where any one of those problems might not, by itself, have been sufficient to preclude reliance on the comparable sales.

Southern Jersey Family Medical Center v. City of Pleasantville, 176 N.J. 184 (2003), involved the charitable use of a health care facility. The New Jersey Supreme Court affirmed the decision of the Appellate Division holding that a community health care facility providing health and dental care regardless of a patient’s ability to pay was actually and exclusively used for a charitable purpose and was entitled to exemption from local property taxation, notwithstanding that it derived most of its revenues from government sources. The bulk of the government funds paid to plaintiff were not grants, but were substantially comprised of Medicaid and Medicare payments which were payments for needed health care services provided to persons who would not otherwise be able to afford them. The plaintiff’s receipt of government funds did not void the charitable nature of the services it rendered.

In Town of Secaucus v. City of Jersey City and 101 Hudson Street Associates c/o Linpro Co., 20 N.J. Tax 384 (Tax 2002), the court held that a substantial change in the ownership of an urban renewal partnership that had been granted a tax exemption under the Fox-Lance Law required the approval of the City. Leasing of the entire project (land and forty-story office building) to a non-urban renewal entity in common ownership with the urban renewal entity is permitted under the Fox-Lance Law and Long Term Tax Exemption Law but excess profits must

be calculated based on project income and not based on the rent payable to the urban renewal entity. The annual service charge payable by the urban renewal entity must be 2% of total project cost and not an average of 2% for the term of the tax exemption. Furthermore, as a matter of law, laches and estoppel do not bar a timely annual tax appeal of an exemption that had been granted under the Fox-Lance Law or Long Term Tax Exemption Law several years before the year of the tax appeal.

In *Town of Secaucus v. City of Jersey City, et al.*, 20 *N.J. Tax* 562 (Tax 2003), the court held that a provision of a local property tax appeal settlement agreement, in which a municipality agreed that it would not appeal assessments on a taxpayer's property "forever," is unenforceable because the provision is not expressly or implicitly authorized by statute.

In *Brunetti v. Cherry Hill Tp.*, 21 *N.J. Tax* 80 (App. Div. 2002), the Appellate Division affirmed a Tax Court decision rejecting allegations of spot assessment where there was an increase in the assessment of the property to approximately the sale price contained in a contract of sale. The sale had not closed at the time of the making of the assessment and there was no evidence that the assessor was aware of the contract. The Tax Court concluded that there was an adequate independent basis for reassessment where the assessor had inspected the property upon an application for farmland assessment and discovered that, contrary to the description on the property record card, the property contained no wetlands.

In *Regent Care Center, Inc. v. Hackensack City*, 362 *N.J. Super.* 403 (App. Div. 2003), the court held that assessment maintenance is proper when it is conducted for legitimate non-discriminatory reasons in an equitable manner applicable to all properties of the same class. There was no impermissible spot assessment where a reassessment was implemented following an evaluation of all commercial and industrial properties in the taxing district, and where

selection for increases in assessment was based upon objective non-sales related evidence.

Evalyn Shippee v. Brick Township, 20 N.J. Tax 427 (Tax 2002), held that property tax assessments that met the prescribed standard of Chapter 123 (N.J.S.A. 5:51A-6) cannot be adjusted where the assessor's finding is substantiated by a neighborhood analysis showing that prices in some neighborhoods were changing at rates differing from the general rate of price change in the municipality. The neighborhood analysis is a legitimate basis for revising the property tax assessments in some but not all neighborhoods. The assessments under attack that met the requirements of Chapter 123, and had not recently been transferred, were not prohibited spot assessments.

Freehold Borough v. WNY Properties L.P./Post & Coach, 20 N.J. Tax 588 (Tax 2003), involved spot assessments. A municipal tax appeal after the recent sale of a property is not the equivalent of a reassessment of the property by the assessor after a recent sale. The municipal appeal was not a spot assessment and was neither arbitrary nor unreasonable. Plaintiff's motion to dismiss the appeal as a spot assessment was denied.

STATE TAX CASES

State tax cases decided during court years covered by this report include those dealing with the Gross Income Tax, the Corporation Business Tax, and the Sales and Use Tax. The following published opinions of state tax cases were among the most significant.

Stryker Corp. v. Director, Div. of Taxation, 168 N.J. 138 (2001), involved the assessment of Corporation Business Tax. The taxpayer, a New Jersey manufacturer that shipped its products to out-of-state locations at the behest of its wholly-owned subsidiary, a New Jersey corporation (so called "drop shipments"), sued the Director of the Division of Taxation, challenging the

assessment of Corporation Business Tax. The Tax Court entered judgment for the Director, 18 *N.J. Tax* 270 (Tax 1999). The taxpayer appealed. The Superior Court, Appellate Division, affirmed, 333 *N.J. Super.* 413 (App. Div. 2000). The taxpayer's petition for certification was granted and the Supreme Court held that receipts from sales to a subsidiary of products drop-shipped to a New Jersey subsidiary's customers outside New Jersey were New Jersey income, taxable under the Corporation Business Tax Act.

In *GNOC, Corp. v. Director, Div. of Taxation*, 167 *N.J.* 62 (2001), a casino owner brought an action to set aside the decision of the Director to impose a sales tax on the provision of complimentary alcoholic beverages to its customers. The Tax Court, 17 *N.J. Tax* 327 (Tax 1998), entered summary judgment in favor of the Director. The owner appealed. The Superior Court, Appellate Division, 328 *N.J. Super.* 467, 746 *A.2d* 466 affirmed. Upon petition, certification was granted. The Supreme Court held that the owner's complimentary provision of alcoholic beverages to casino patrons constituted "retail sales" that were subject to sales taxes, rather than "resales" that were exempt from sales taxes. The Legislature's inadvertence in failing to reenact the alcoholic beverages exclusion from Sales and Use Tax Act exemption for food and beverages did not establish legislative intent to exclude alcoholic beverages from sales taxes.

In *Adamar of New Jersey v. Director, Div. of Taxation*, 167 *N.J.* 67 (2001), the Supreme Court modified and affirmed the judgment of the Appellate Division concerning taxation of complimentary alcoholic beverages substantially for the reasons explained in the Appellate Division's opinion, *Adamar v. Director, Div. of Taxation*, 328 *N.J. Super.* 481 (App. Div. 2000), as supplemented by the Supreme Court's opinion in *GNOC v. Director, Div. of Taxation*, 167 *N.J.* 62 (2001). The Supreme Court also affirmed the Appellate Division's determination to

remand to the Tax Court for further proceedings on the issue concerning taxation of non-alcoholic beverages.

In Meadowlands Basketball Associates v. Director, Div. of Taxation, 340 N.J. Super. 76 (App. Div. 2001), an owner of a professional basketball team challenged a sales tax assessment on the amount of impost fees collected, which were paid to the arena owner, the New Jersey Sports and Exposition Authority (NJSEA). The Tax Court, 19 N.J. Tax 85, held that the impost fee was not exempt from taxation. The team owner appealed. The Superior Court, Appellate Division, held that the impost fees were not exempt from sales tax.

In Sidman v. Director, Div. of Taxation, 19 N.J. Tax 484 (App. Div. 2001), taxpayers brought an action to challenge a decision by the Division of Taxation that in calculating their gross income tax, the taxpayers could not deduct interest on the money that the taxpayer had borrowed to purchase shares in a subchapter S corporation. The Tax Court, 18 N.J. Tax 636 (Tax 2000), upheld the Director's determination. The taxpayer appealed. The Superior Court, Appellate Division, held that the interest was not a business expense and was not deductible from the taxpayer's *pro rata* share of the corporation's income.

In Scully v. Director, Div. of Taxation, 19 N.J. Tax 553 (Tax 2001), a taxpayer appealed a Gross Income Tax assessment by the Director of the Division of Taxation for a tax on distributive share of income from discharge of indebtedness owed by taxpayer's partnership. The Tax Court held that discharge of indebtedness income was not includible in taxpayer's distributive shares of partnership income.

Reck v. Director, Div. of Taxation, 345 N.J. Super. 443 (App. Div. 2001), involved a partner's appeal of the decision by the Director, Division of Taxation, that a partnership's contribution to a retirement plan under the Keogh Act was not deductible for gross income tax

purposes from the taxpayers' distributive share of partnership income. The Tax Court, 18 N.J. Tax 598 (Tax 2000), rendered judgment in favor of the taxpayers. The Director appealed. The Superior Court, Appellate Division, held that the partnership's retirement plan contributions were not deductible under the Gross Income Tax Act. The New Jersey Supreme Court affirmed for the reasons expressed by the Appellate Division, 175 N.J. 54 (2002).

In River Systems, Inc. v. State, Dept. of Treasury, Div. of Taxation, 19 N.J. Tax 599 (Tax 2001), three New Jersey corporations filed protests of the Director's denial of refunds under the Corporation Business Tax, alleging that they maintained regular places of business outside of the state and only allocable portions of their total income were taxable in New Jersey. The Director brought a motion for summary judgment. The Tax Court held that the corporations were not entitled to allocate income outside of the state in computation of their taxable income.

In A.H. Robins Co., Inc. v. Director, Div. of Taxation, 20 N.J. Tax 338 (Tax 2002), the court held that a corporation acquiring assets of another corporation may not utilize net operating losses incurred by the acquired corporation pursuant to N.J.A.C. 18:7-5.13 because the acquiring corporation and the acquired corporation were not incorporated in the same state. The fact that the acquisition arose out of a reorganization necessitated by a federal bankruptcy action does not preempt the State of New Jersey from prescribing its own method of calculating taxes. This determination was affirmed by the Appellate Division during the 2003-2004 court year.

Mayer & Schweitzer, Inc. v. Director, Div. of Taxation, 20 N.J. Tax 217 (Tax 2002) involved a taxpayer, that was a market maker that earned its income by selling securities at a higher price than originally purchased. The taxpayer filed suit against the Director of the Division of Taxation challenging the denial of refund claims by the Division after the taxpayer filed amended Corporation Business Tax returns. The Tax Court held that sales of securities by

the taxpayer had to be allocated to the location of the taxpayer's customers rather than the location of the taxpayer, as is the case for securities dealers who simply broker sales between customers.

Lenox, Inc. v. Director, Div. of Taxation, 20 N.J. Tax 464 (Tax 2002), involved efforts by the Director of the Division of Taxation to recover refunds paid to a corporate taxpayer based on changes made by the Internal Revenue Service in the computation of the corporation's taxable income. The Tax Court held that the Director had inherent authority to recover refunds erroneously paid to a taxpayer, and that the interest on the disputed refund amount was payable from the date the taxpayer received notice that the refunds were paid erroneously.

CONCLUSION

As the Tax Court approaches the twenty-fifth anniversary of its establishment, it is building on the record of the original judges appointed in 1979 and 1980 all of whom have left the Court. The work of the Court is reported in the 20 plus volumes of New Jersey Tax Court Reports, the Biennial Reports of the Supreme Court Committee on the Tax Court and the Annual Reports of the Presiding Judge. The product of that work is a more certain understanding by litigants, taxpayers, and taxing authorities of the tax laws of New Jersey and a reduction in the uncertain areas of the law. Nevertheless, new issues arise and must be resolved; new statutes are enacted and must be interpreted. The Tax Court continues to provide a fair, impartial forum for the resolution of these important and often highly technical issues of tax assessment and administration.

One area that is of particular interest to the taxpayers of New Jersey is the heavy reliance of this State on the local property tax for the funding of government services. The need for tax

reform is expressed constantly in the halls of government and in the press. Eventually some actions will be taken by the Legislature or a Constitutional Convention. Whatever the nature of the reform, there will inevitably be disagreements about the imposition of taxes in New Jersey. The Judges of the Tax Court of New Jersey stand ready to resolve disputes as they arise on a case-by-case basis, building on twenty-five years of experience embodied in the written decisions of this Court and the special qualifications, knowledge, and experience of its judges required by N.J.S.A. 2B:13-6.

Respectfully submitted,

Joseph C. Small, P.J.T.C.

February 10, 2004

APPENDIX.

ANNUAL REPORT OF THE
PRESIDING JUDGE OF THE TAX COURT OF NEW JERSEY
FOR THE COURT YEAR ENDED JUNE 30, 2003.
(with statistics for the Court Years ending
June 30, 2001 and June 30, 2002)

		<u>Page No.</u>
Tax Court cases pending, filed and disposed	CY 2001	1a
	CY 2002 and 2003	1a.1
Character of complaints filed	CY 2001	1b
	CY 2002	1b.1
	CY 2003	1b.2
Breakdown by county of local property tax complaint filings by court year		1c
Summary of Tax Court action in review of local property tax complaints		1d
	CY 2001	
	CY 2002 and 2003	1d.1

A. Tax Court cases pending, filed and disposed, July 1, 2000 – June 30, 2001:*

	Local Property Tax	State Tax	Equalization & related Cases	Totals
1. Cases pending as of first day of period	7,363	390	0	7,753
2. New cases filed during period	4,546	263	6	4,815
Subtotal	11,909	653	6	12,568
3. Cases disposed	4,315	194	6	4,515
4. Pending as of last day of period	7,594	459	0	8,053

* adjusted to reflect end of year physical inventory

Tax Court cases pending, filed and disposed for 2001-2002:*

	Local Property Tax	State Tax	Equalization & related cases	Totals
1. Cases pending as of first day of period	7,594	459	0	8,053
2. New cases filed during period	5,597	350	5	5,952
Subtotal	13,191	809	5	14,005
3. Cases disposed	5,620	307	5	5,932
4. Pending as of last day of period	7,571	502	0	8,073

* adjusted to reflect end of year physical inventory

For 2002-2003:*

	Local Property Tax	State Tax	Equali- zation & related	Totals
1. Cases pending as of first day of period	7,571	502	0	8,073
2. New cases filed during period	5,920	715	4	6,639
Subtotal	13,491	1,217	4	14,712
3. Cases disposed	4,973	467	4	5,444
4. Pending as of last day of period	8,518	750	0	9,268

* adjusted to reflect end of year physical inventory

A. Character of complaints filed for the 2000-2001 court year:

1. Local property tax

Regular	3,276	
Small claims	<u>1,270</u>	
Total		4,546

2. Cases other than local property tax

a. State tax

Regular	145	
Small claims	<u>124</u>	
Total		269

Type of tax

Cigarette	1
Corporation Business	45
Corporation Income	1
Gross Income	78
Homestead Tax Rebate	78
Inheritance	8
Insurance Premiums	3
Litter Control	1
Miscellaneous	2*
NJ Saver Rebate	8
Property Tax Rebate	7
Railroad Franchise	3
Realty Transfer Fee	1
Sales and Use	23
Superior Court transfers	2
Order to Reval	2

b. Equalization and related cases

Table of Equalized Valuation (school aid)	<u>6</u>
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Total	4,815
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*Property tax reimbursement municipal tax lien

B. Character of complains filed for the 2001-2002 court year:

1.	<u>Local property tax</u>		
	Regular	4,335	
	Small claims	<u>1,262</u>	
	Total		5,597
2.	<u>Cases other than local property tax</u>		
a.	<u>State tax</u>		
	Regular	139	
	Small claims	<u>216</u>	
	Total		355
	<u>Type of tax</u>		
	Ten day deficiencies	3	
	Cape May County Tourism Sales	1	
	Cigarette	2	
	Corporation Business	50	
	Corporation Income	2	
	Gross Income	91	
	Homestead Tax Rebate	165	
	Inheritance	7	
	Insurance Premium	8	
	Litter Control	2	
	Miscellaneous	3	
	Motor Fuels Sales	2	
	Motor Fuels Use	1	
	Realty Transfer Fee	1	
	Sales and Use	12	
	Superior Court Transfers	2	
b.	<u>Equalization and related cases</u>		
	Table of Equalized		
	Valuation (school aid)	<u>5</u>	
	Total		5,952

B. Character of complaints filed for the 2002-2003 court year.

1.	<u>Local property tax</u>		
	Regular	4,964	
	Small claims	<u>956</u>	
	Total		5,920
2.	<u>Cases other than local property tax</u>		
a.	<u>State tax</u>		
	Regular	134	
	Small claims	<u>585*</u>	
	Total		719*
	<u>Type of tax</u>		
	Ten day deficiencies	18	
	Cigarette	1	
	Corporation Business	38	
	Corporation Income	1	
	Estate Tax	2	
	Gross Income	52	
	Homestead Tax Rebate	163	
	Inheritance	7	
	Insurance Premiums	1	
	Litter Control	1	
	Miscellaneous	14	
	Motor Fuels Sales	1	
	NJ Saver Rebate	373*	
	Property Tax Reimbursement	19	
	Railroad Franchise	3	
	Retaliatory Tax	1	
	Sales and Use	19	
	Superior Court transfers	1	
b.	<u>Equalization and related cases</u>		
	Table of Equalized		
	Valuation (school aid)	<u>4</u>	
	Total		6,639

*The doubling of the number of State tax appeals from the prior year is attributable to a new category of appeals – New Jersey Saver Rebates. These small claims cases will not require substantial judicial effort to resolve, and can be expected to decrease in number as taxpayers become familiar with the rules applicable to this new form of tax relief.

Breakdown by county of local property tax complaint filings for court years ended:

	6/30/96	6/30/97	6/30/98	6/30/99	6/30/00	6/30/01	6/30/02	6/30/03
Atlantic	229	219	168	130	451	63	99	59
Bergen	1,799	1,456	1,457	1,219	867	871	986	946
Burlington	101	88	55	82	53	55	54	52
Camden	129	166	114	86	64	62	68	80
Cape May	94	74	44	21	23	33	12	30
Cumberland	21	18	22	13	14	18	12	13
Essex	1,082	1,973	1,138	1,094	809	927	1,059	1433
Gloucester	102	57	58	55	49	37	48	52
Hudson	1,653	1,281	977	842	606	458	381	645
Hunterdon	50	54	42	50	36	43	48	76
Mercer	184	164	84	91	68	63	78	79
Middlesex	863	710	513	298	226	204	248	339
Monmouth	525	332	243	199	171	179	265	292
Morris	499	320	363	441	382	411	486	690
Ocean	195	267	146	82	91	98	391	97
Passaic	759	712	613	735	583	494	592	298
Salem	20	26	11	11	7	10	6	7
Somerset	141	115	108	72	111	147	296	269
Sussex	72	48	63	77	46	19	79	77
Union	639	513	504	417	428	296	346	338
Warren	54	33	46	38	59	58	43	48
TOTALS*	9,211	7,726	6,769	6,053	5,144	4,546	5,597	5,920

* This figure does not include added assessment, omitted assessment, farmland assessment or correction of error complaints which approximated 100 filings a year.

Summary of Tax Court Action
in Review of Local Property Tax Assessments
July 1, 2000 - June 30, 2001

Total Assessments on Direct Appeal Complaints reviewed by Tax Court	\$15,927,180,445
Total Assessments as determined by County Tax Board judgments reviewed by Tax Court	\$ 1,201,794,042
Total Assessments for Correction of Errors reviewed by the Tax Court	<u>\$ 16,061,499</u>
Total Local Property Assessments Reviewed	<u>\$17,145,035,986</u>

Summary of Tax Court Action
in Review of Local Property Tax Assessments
July 1, 2001 - June 30, 2002

Total Assessments on Direct Appeal Complaints reviewed by Tax Court	\$19,320,555,313
Total Assessments as determined by County Tax Board judgments reviewed by Tax Court	\$ 1,405,819,273
Total Assessments for Correction of Errors reviewed by the Tax Court	<u>\$ 34,900,200</u>
Total Local Property Assessments Reviewed	<u>\$20,761,274,786</u>

Summary of Tax Court Action
in Review of Local Property Tax Assessments
July 1, 2002- June 30, 2003

Total Assessments on Direct Appeal Complaints reviewed by Tax Court	\$28,179,403,901
Total Assessments as determined by County Tax Board judgments reviewed by Tax Court	\$ 1,533,741,228
Total Assessments for Correction of Errors reviewed by the Tax Court	<u>\$ 48,482,725</u>
Total Local Property Assessments Reviewed	<u>\$29,761,627,854</u>