


P U B L I C H E A R I N G

before
New Jersey Legislature,
"ASSEMBLY, TAXATION COMMITTEE,
on 

ASSEMBLY CONCURRENT RESOLUTION NO. 130
(Amends Constitution to provide for setting
up a Tax Division in the Superior Court.)

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185 W. State Street
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Held:
May 9, 1974
Assembly Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Steven P. Perskie (Chairman)
Assemblyman Walter E. Foran
Assemblyman Francis J. Gorman
Assemblyman John A. Sweeney

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ASSEMBLY CONCURRENT RESOLUTION No. 130

STATE OF NEW JERSEY

INTRODUCED APRIL 4, 1974

By Assemblymen PERSKIE, MACINNES, WORTHINGTON and
SWEENEY

Referred to Committee on Judiciary

A CONCURRENT RESOLUTION to amend Article VI, Section III, paragraph 3, of the Constitution of the State of New Jersey.

1 BE IT RESOLVED *by the General Assembly of the State of New*
2 *Jersey (the Senate concurring):*

1 1. The following proposed amendment to the Constitution of the
2 State of New Jersey is hereby agreed to:

PROPOSED AMENDMENT

3 Amend Article VI, Section III, paragraph 3, to read as follows:

4 3. The Superior Court shall be divided into an Appellate Division,
5 a Law Division, [and] a Chancery Division, *and a Tax*
6 *Division*. Each division shall have such parts, consist of such
7 number of judges, and hear such causes, as may be provided by
8 rules of the Supreme Court *or by law*.

1 2. When this proposed amendment to the Constitution is finally
2 agreed to, pursuant to Article IX, paragraph 1 of the Constitution,
3 it shall be submitted to the people at the next general election
4 occurring more than 3 months after such final agreement and shall
5 be published at least once in at least one newspaper of each county
6 designated by the President of the Senate and the Speaker of the
7 General Assembly and the Secretary of State, not less than
8 3 months prior to said general election.

1 3. This proposed amendment to the Constitution shall be submitted
2 to the people at said election in the following manner and
3 form:

4 There shall be printed on each official ballot to be used at such
5 general election, the following:

6 1. In every municipality in which voting machines are not used,
7 a legend which shall immediately precede the question, as follows:

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

- 8 If you favor the proposition printed below make a cross (X),
9 plus (+) or check (✓) in the square opposite the word "Yes."
10 If you are opposed thereto make a cross (X), plus (+) or
11 check (✓) in the square opposite the word "No."
12 2. In every municipality the following question:

	Yes.	Shall the amendment, agreed to by the Legislature, to amend paragraph 3 of Section III of Article VI of the New Jersey Constitution to provide that there be a Tax Division in the Superior Court be adopted?
	No.	

STATEMENT

This resolution proposes to amend the Constitution so as to add a Tax Division to the Superior Court. The court is presently composed of an Appellate Division, a Law Division and a Chancery Division.

S T E V E N P. P E R S K I E (Chairman):
We will now start this hearing, as there are a number of people here who wish to be heard, and I assume Mr. Heaney will be here in short order to testify as well.

This is a public hearing that has been scheduled with respect to Assembly Concurrent Resolution No. 130, introduced on April 4, 1974, referred to the Taxation Committee and reported by the Committee.

For the purpose of those who seek to testify, although the hearing is listed as a hearing on ACR 130, we will likewise solicit your opinions, and you may feel free to comment, with respect to the legislation dealing with the establishment of a Tax Court as well, those bills being Assembly Bills 649, 650 and 651, if anyone chooses to do so.

In addition, I would refer those interested to Assembly Bill 1626 which is the implementing legislation dealing with Assembly Concurrent Resolution 130. And that bill, as well, has been referred to the Taxation Committee, amended and reported by the Committee.

The first witness I will call will be from the New Jersey State Bar Association, Mr. Arthur L. Nims.
A R T H U R L. N I M S: My name is Arthur Nims and I am here representing the New Jersey State Bar Association. We appreciate very much this opportunity to be heard on this particular matter.

The New Jersey State Bar Association for many years has been interested in and concerned about how tax litigation is handled in this State and long ago concluded that a separate judiciary should be created in some form to take tax litigation out of the Division of Tax Appeals and into the Court System.

As part of our study, we have carefully reviewed the Oregon Tax Court Act. The State of Oregon has had approximately ten years of experience with their Tax Court

and we feel we have gleaned some useful information from studying their Act and reading about their Court.

The American Bar Association has also promulgated a Model Tax Court Act which we have reviewed, and considered the various bills that have been introduced in the New Jersey Legislature in light of this Model Act.

We, as Lawyers, have now concluded that we are not so much concerned with the form of the Court as we are with taking this kind of litigation out of the Administrative Agency which determines and assesses the tax and then, at least in the minds of the public, sits as a judge on its own determination.

We feel that the present situation is inefficient. The Division of Tax Appeals is manned by part-time Judges, men and women who are also practicing Lawyers. So this, in effect, cuts into the time they have available or are willing to make available to sit as Judges on tax cases.

There is a widespread and prevailing belief, which I share, that there is presently an undue delay in reaching trial on tax cases and then, once trial has been reached and held, in getting a decision out of the Division of Tax Appeals.

In my own experience, I recently had a matter before the Division of Tax Appeals which was in the Division for over three years, never came to trial and was finally settled.

The Division of Tax Appeals considers itself also to have somewhat limited jurisdiction and in certain situations, in fact I think in most situations, is unwilling or unable to consider any constitutional questions.

Under the present system, there is no provision for a trial on the merits of an inheritance tax case. The Division of Tax Appeals does not have jurisdiction in inheritance tax cases and once a determination is made by

the Inheritance Tax Examiner the taxpayer's only recourse is to take an appeal directly to the Appellate Division. Many inheritance tax cases involve almost pure questions of fact, such as valuation of corporate stock, and this makes for an extremely cumbersome and almost unworkable situation.

Finally, and perhaps most importantly, is the impression held by the public in general that there is really no impartiality in tax cases because, as I said previously, the Division of Tax Appeals is really an administrative agency, part of the Treasury Department, and therefore it seems inconceivable that a truly impartial decision could be reached in a tax litigation.

To conclude, the New Jersey Bar Association does not hold any particular brief for the form of the Court. We are perfectly willing to see tax cases decided by the Superior Court rather than through a newly established Tax Court. We do urge, however, that some system be instituted, as soon as possible, abolishing the Division of Tax Appeals and providing for tax litigation within the Judicial System.

Thank you very much.

ASSEMBLYMAN PERSKIE: Thank you.

Assemblyman, have you any questions?

ASSEMBLYMAN FORAN: No questions.

ASSEMBLYMAN PERSKIE: Mr. Nims, may I just ask you one question?

MR. NIMS: Sure.

ASSEMBLYMAN PERSKIE: Do you have any idea, with reference to the Oregon experience, whether or not the Tax Court there is set up either as a part of the Judiciary or as a part of the Executive?

MR. NIMS: It's an independent court. I believe it would be on the same basis as the Tax Court would have been in New Jersey had Assembly 649 been enacted.

ASSEMBLYMAN PERSKIE: Are you, or is the Association, particularly concerned with whether or not any Tax Court, assuming the jurisdiction that you've discussed, would be established either as an agency of the Executive Branch or part of the Judicial System?

MR. NIMS: Well, we would prefer it to be part of the Judicial System.

ASSEMBLYMAN PERSKIE: OK. I have nothing further.

Assemblyman Gorman, do you have any questions?

ASSEMBLYMAN GORMAN: No.

ASSEMBLYMAN PERSKIE: Thank you very much, Mr. Nims.

ASSEMBLYMAN PERSKIE: Mr. Haines, if I may impose on you, I promised Judge Heaney that we would hear him as soon as he got here.

J A M E S R. H E A N E Y: Good morning, Mr. Chairman and members of the Assembly Taxation Committee. I am here in my capacity as Deputy Administrative Director of the Courts.

The Chief Justice has asked me to present to your Committee the position of the Supreme Court on ACR-130 and its implementing legislation. The Supreme Court is opposed to this proposal.

The main thrust of this legislation, as you well know, would be to establish a new Division of Taxation in the Superior Court. This new tax division would have jurisdiction to hear and determine generally all appeals in matters of taxation. This jurisdiction would primarily consist of the review of real and personal property tax assessments which are presently heard in the Division of Tax Appeals in the Department of the Treasury. Approximately 6,000 of these appeals are handled each year in the existing Division of Tax Appeals. A very small percentage of these find their

way to the Judiciary through appeal to the Appellate Division. In the last court year, 73 appeals were taken from the Division of Taxation to the Appellate Division.

It's the position of the Court for the most part that these matters determined in the existing Division of Tax Appeals, as they involve determination of the value of real and personal property and the review of county equalization tables, should be handled administratively.

It's the Court's position that this type of litigation presents too narrow an area for a court of general jurisdiction. They feel it is more appropriate that these matters be handled exclusively by an agency which has the expertise in the matter of valuation.

Further, the establishment of this new division is incompatible with the aim of the Supreme Court to establish an integrated court system which would be composed of judges handling every type of case coming before the courts. In the completely integrated court system, the judges would be assigned to the various jurisdictions and handle the matters as the need arose, and the Supreme Court, the Chief Justice, would be best able to suit that need. In addition, the adding of some 6,000 new cases to the court calendar would cause more calendar congestion.

There is another feature of ACR-130 that the court finds most troublesome. Presently, the Supreme Court, by Rules, has the ability and the responsibility to determine how many parts there should be and how many judges in each part and what types of cases should be handled by each part. As ACR-130 is drafted, it provides that this should be determined by the Rules of Court or by Law. So it would be possible that another Legislature might enact some laws and change this determination of parts and cases and the number of judges assigned.

Now, the position of the Supreme Court is that if there are improvements to be made to the existing system, they should be accomplished in the Executive Branch, perhaps with full-time members of the existing Tax Tribunal. Perhaps consideration might be given to a salary commensurate with full-time responsibilities, tenure and adequate staffing.

The Court would not be opposed to legislation which would selectively transfer to the Judiciary other matters involving the various tax statutes. As a matter of fact, the Court would be willing to have some of its staff and staff of the Administrative Office of the Courts meet with the Tax Committee to focus into some areas where it would be more appropriate to have the Court obtain jurisdiction. An example is the situation we have now with the review of transfer inheritance tax matters. By statute, presently that review is in the Appellate Division.

Now as an example of a few areas, and they're just by way of example, you might consider the review of the corporation franchise taxes, sales taxes, motor fuel taxes, and any matters of taxation which involve the construction and application and exemption of the various tax statutes.

I want to make it clear that these are just examples to show that there are areas where some changes could be made but, by and large, the bulk of those matters handled by the Division of Taxation we feel are not appropriate to go into the Court system.

Thank you.

ASSEMBLYMAN PERSKIE: Thank you. Would you be available for some questions?

MR. HEANEY: Yes, I am.

ASSEMBLYMAN PERSKIE: Mr. Foran?

ASSEMBLYMAN FORAN: No questions.

ASSEMBLYMAN PERSKIE: Mr. Gorman?

ASSEMBLYMAN GORMAN: No questions.

ASSEMBLYMAN PERSKIE: Mr. Sweeney?

ASSEMBLYMAN SWEENEY: Having just come in, I'll pass.

ASSEMBLYMAN PERSKIE: I have a few.

Mr. Heaney, as I gather it, the major thrust of the Court's objection is that it does not consider as appropriate for judicial action the majority or the great weight of the jurisdiction presently held by the Division of Tax Appeals.

MR. HEANEY: Yes, that's correct. It feels that this can be handled administratively with people having expertise in that area and not be thrust into a court of general jurisdiction.

ASSEMBLYMAN PERSKIE: All right. Now, setting aside for the moment that part of the jurisdiction of the Division which concerns itself with the review of valuation of real property tax and real property assessments, and putting that into a category by itself, does the Court have any inherent opposition to the assumption by the Judiciary of the jurisdiction of all other tax matters.

MR. HEANEY: No. The Court does not. However, it would like to work on any suggestions like that. There is the question of what type of review should exist in the judicial system, whether it be in the Appellate Division or say as a facts gathering, say similar to what the Law Division is.

ASSEMBLYMAN PERSKIE: By the way, I think I should expressly indicate that the Court's offer through you to work with us in the development of such a program is very welcome and you can be assured that it will be followed up on both through our staff and through the members of the Committee. And I know from previous discussions with you that your offer is legitimate and I appreciate it.

With respect to what we carved out a minute ago,

the jurisdiction of the Division as it presently relates to the review of valuation of property, what is the Court's thinking as to the most appropriate forum for that type of review.

MR. HEANEY: The carve out?

ASSEMBLYMAN PERSKIE: Yes. That which the Court is certain is not appropriate for judicial review.

MR. HEANEY: Well, number one, it feels it should stay in the Executive Branch and it could be termed a court. The description of it isn't important. But it feels that perhaps a full-time - we will call it a court for the purpose of identification -- a full-time court with appropriate staff, as a matter of fact hearing officers who might make some preliminary determinations of perhaps the procedure, similar to the Federal system where matters are negotiated at conferences. A procedure something like that it feels would be appropriate.

ASSEMBLYMAN PERSKIE: All right. And that should be handled, you feel, in the Executive Branch.

MR. HEANEY: Yes, sir.

ASSEMBLYMAN PERSKIE: And, therefore, I would presume that the Court would not be particularly interested in establishing through its rule-making powers the rules and regulations for the conduct of any such hearings.

MR. HEANEY: No, I don't think it would be appropriate for the judiciary to establish rules for that agency in the Executive Branch.

ASSEMBLYMAN PERSKIE: Now with respect to other tax matters, you mentioned inheritance tax, corporate taxes, sales tax, and the like, where there presently exists few if any trial proceedings, that is there are some administrative proceedings which are directly appealable to the Appellate Division, what is the Court's thinking as to the most appropriate forum if we determine that it's appropriate for a trial?

MR. HEANEY: Well, the Court would, as I said, like to retain the rule-making power to say that such a matter which is appropriate for trial should be tried in the Superior Court, and those matters which are purely appellate in nature would be in the Appellate Division of the Superior Court.

ASSEMBLYMAN PERSKIE: OK. Do any other members have a questions? Mr. Foran?

ASSEMBLYMAN FORAN: Mr. Heaney, the previous gentleman, Mr. Nims, referred to the case backlog, and so forth, of these tax appeals. Do you think that the establishment under the Executive Branch of a new piece of bureaucracy would facilitate the backlog of these tax appeal cases?

MR. HEANEY: Well, presently the Division of Tax Appeals, as constituted, is a part-time agency and it could very well be that through the volume of cases it should not function as a part-time agency and perhaps a full-time agency would enable them to cut into the backlog. I would say, if there is a backlog then the first step should be to make it full time to eat into that backlog.

ASSEMBLYMAN FORAN: Well, the essence of your entire testimony then would be to make the tax appeals a full-time situation in the Executive Branch then. Is that about it?

MR. HEANEY: Yes, sir.

ASSEMBLYMAN FORAN: Thank you.

ASSEMBLYMAN PERSKIE: Mr. Gorman?

ASSEMBLYMAN GORMAN: No questions.

ASSEMBLYMAN PERSKIE: Mr. Sweeney?

ASSEMBLYMAN SWEENEY: No questions.

ASSEMBLYMAN PERSKIE: Mr. Heaney, thank you very much. I can assure you, as I indicated, that we will be in touch with your office with respect to the development of any implementing legislation.

MR. HEANEY: Thank you.

ASSEMBLYMAN PERSKIE: Mr. Haines.

For the benefit of those in the gallery who may have come in and are wondering what we're doing, this is a hearing by the Taxation Committee of the General Assembly. We are studying some bills that would change our Court system with respect to the trial of cases involving taxes because we feel we are going to be reforming our entire State tax structure this year and this is a good place to start. We are hearing from various witnesses. The last witness was a gentleman representing the Administrative Office of the Courts in the State of New Jersey. The next witness will be Mr. Frank Haines who is Executive Director of the New Jersey Taxpayers Association, which is a very prestigious organization in this State.

F R A N K W. H A I N E S: Good morning, Mr. Chairman and members of the Committee.

A full-time tax court was among the New Jersey Taxpayers Association's recommendations for property tax administrative changes in its 1971 Report, which was called Financing New Jersey State & Local Government - The Major Problem. This Report was a policy statement which was presented to Governor Cahill's New Jersey Tax Policy Committee.

I would like to point out that the Tax Policy Committee Report, part 2, which is on the subject of property tax, on page 65, reflected a similar recommendation. If I may quote, it says: "The Division of Tax Appeals in the Department of the Treasury should be replaced by a full-time tax court within the Judicial Branch of Government, such court to continue the use of informal procedures." And there are a couple of other recommendations related to that and I think you gentlemen are aware of the fact, several of you who covered all the hearings

on the legislation, that there was legislation in to reflect that. It didn't get passed, and the Chairman has reintroduced much of that same legislation in the current session.

As I recall, the Chief Justice was one of the members of the Tax Policy Committee. I think there is no question that there were so many recommendations that even though a signature might have been appended to the Report it certainly couldn't be interpreted to reflect an endorsement of every single one of the recommendations in the voluminous --

ASSEMBLYMAN PERSKIE: The Chief Justice, through Mr. Heaney, has just made that perfectly clear.

MR. HAINES: The Association supported the legislation in 1972; even more actively last year and we continue our endorsement of the principle of a tax court today.

I would just like to comment parenthetically, it is regrettable that there is not a greater effort to strengthen existing functions and services of government, particularly in this area, before we create new agencies and add new functions of government. I think there are many areas that we need to reinforce and improve and by adding others, some of these others may get neglected.

I think it is also unfortunate that in the case of the Tax Court some money has not been found to bring together, with a view to compromise, those organizations or individuals who have reservations or exceptions to the specifics, and I was certainly pleased to hear the Judiciary testify today that they are willing to maybe cooperate and bring together some views so that out of this might come some constructive effort in this direction.

The Constitutional Amendment route will certainly place a responsibility on proponents of the measure to assist in a constructive education effort in order to obtain a degree of public understanding and support on

a somewhat complicated subject should the Legislature so pass it. But I think that there are a number of organizations that would be prepared to do that within their ability.

With all due respect to those now involved in the appeals process, taxation is too complicated and too specialized to be left to part-time non-specialists. Present trends to more complex taxes and procedures as anticipated in forthcoming proposals for a personal income tax and a statewide property tax would appear to make it even more essential that the present tax appeals process be strengthened in New Jersey.

The New Jersey Taxpayers Association believes that the Tax Court is the right solution.

ASSEMBLYMAN PERSKIE: Thank you.

Mr. Gorman?

ASSEMBLYMAN GORMAN: No questions.

ASSEMBLYMAN PERSKIE: Mr. Foran?

ASSEMBLYMAN FORAN: No questions.

ASSEMBLYMAN PERSKIE: Mr. Sweeney?

ASSEMBLYMAN SWEENEY: Yes, I have just one.

I think you initially stated that it was your desire to see a full-time tax court within the judicial system.

MR. HAINES: Yes.

ASSEMBLYMAN SWEENEY: Suppose that there were to be a full-time tax court without the judiciary system but run say on a parallel course, that is the administration would not be within the judiciary or under the Administrative Office of the Courts but rather through the Executive Department. Would that satisfy your same requirements?

MR. HAINES: If we could be assured that the same would be accomplished and that the people who were appointed would be competent and specialists in the field of taxation

and you had the proper support necessary and you could determine in cooperation with the Judiciary, as mentioned earlier, the proper route for certain of these cases, I think, yes, we probably would support such an effort, if you were sure to accomplish the same objective so that you would cut the backlog and you would provide - let's say the expertise is very important.

ASSEMBLYMAN SWEENEY: That's the other question that I had.

When you talk in terms of expertise, the State Division of Tax Appeals today, as I view it and as I understand it, is comprised of Attorneys who sit on a part-time basis as judges in the State Division of Tax Appeals with no expertise required on their part to be appointed to this Division. And I am wondering exactly what you had in mind by way of expertise.

MR. HAINES: Well I think that cannot be legislated but pretty much has to come through the appointment process.

ASSEMBLYMAN PERSKIE: You'll know it when you see it.

ASSEMBLYMAN SWEENEY: I mean, do you have some qualifications in mind?

MR. HAINES: Oh, I think Attorneys who have developed a specialty in taxation in various areas. Not to say that you don't need someone who may not bring too much expertise; you've got to have a balance. But there has to be also, I think, some professional staff. Again I'm not even familiar with some of the present personnel. In the past there have been some questions about support, the regular support this agency should have had. And also it's difficult to get meaningful data - it has been over the years - significant data in terms of the real backlog, in terms of the interpretation of it, and so on. They have been bogged down. And the changing of the title

in legislation to "judges" doesn't appear to have really made any significant difference even though salaries have been updated, but all of these things have to be looked at in terms of the upgrading of the office.

ASSEMBLYMAN SWEENEY: All right. Thank you. That's all I have at this time.

ASSEMBLYMAN PERSKIE: Does anybody else have a question? (No response)

Mr. Sweeney, you have managed to preempt my questions.

MR. NIMS: I wonder if I could say one more thing?

ASSEMBLYMAN PERSKIE: Thank you very much, Mr. Haines. I appreciate it.

Certainly, Mr. Nims.

MR. NIMS: I merely wanted to make two additional remarks.

First, the New Jersey State Bar Association, through its Taxation Section, of course offers our services and what expertise we have to your Committee to help out in any way we can.

Secondly, you asked earlier whether we had any comments on Assembly 649. We do have a marked-up copy of 649 which reflects changes or possible modifications which we, as Lawyers, think might be useful and perhaps you might like me to introduce this into the record.

ASSEMBLYMAN PERSKIE: Well, I'll tell you, rather than introduce it into the record, which I don't think is necessary, I would appreciate it if you would give it to our Staff Aide who will analyze it thoroughly and make a report to the Committee on the suggestions, for which, by the way, we are very grateful. And the same applies to your offer to help in the drafting of legislation. We are continuously interested in that

and hope that you will see fit to give us the benefit of your thinking as you go along. If you would give it to Gil Deardorff.

MR. NIMS: Thank you very much.

ASSEMBLYMAN PERSKIE: Thank you.

Is there anybody else who would like to be heard with respect to Assembly Concurrent Resolution 130 or any of the related legislation that we've been discussing this morning? (No response)

Is there any member of the Committee who would like to provide testimony or make a statement?

Hearing no response, I will declare the hearing adjourned. The Committee will recess to Room 223 in five minutes where we will commence the regular business portion of the meeting.

Thank you very much.

(Hearing concluded)