

TAX COURT OF NEW JERSEY



ANNUAL REPORT OF THE
PRESIDING JUDGE OF THE TAX COURT OF NEW JERSEY
FOR THE COURT YEAR ENDED JUNE 30, 1999.

In accordance with *N.J.S.A. 2B:13-11*, this report is submitted to the Chief Justice of the Supreme Court of New Jersey and the Administrative Director of the Courts.

The Tax Court was officially established on July 1, 1979 as a trial court in the judicial branch of government having statewide jurisdiction to review state tax and local property tax assessments. June 30, 1999 marked the end of the court's twentieth year. This milestone was underscored by the New Jersey State Bar Association when, on April 15, 1999, it sponsored a reception to celebrate the Tax Court's twentieth anniversary.

Over the course of the past twenty years the filings in the court have fluctuated from a low of 4,619 for the year ended June 30, 1987 to a high of 16,300 for the year ended June 30, 1992. As has been noted in prior annual reports, this fluctuation in filings is attributable to the cyclical nature of real estate market values and the revaluation process as conducted periodically by the taxing districts. Since June 30, 1992, however, with the exception of the year ended June 30, 1994, filings have decreased each year from the high of 16,300 to 6,356 for the current year ended June 30, 1999.

During the 1997-1998 court year the Tax Court Management Office, with the technical assistance of the Information Systems Division of the Administrative Office of the Courts, implemented a technical conversion of the Tax Court's computer system from an inefficient DBASE 3, CLIPPER PC application to a SYBASE PC client-server application in order to accommodate the current data processing needs of the Tax Court. During the course of the past year, a variety of positive

enhancements relating to such matters as data entry, table additions, edits and prompts, have been made to the system all with a view toward improving the quality of case-processing.

The current system offers up-to-date computer technology, permits detailed analyses of case data and provides a sound foundation for the establishment of electronic filing and imaging in the court. As a consequence, the court is now in the development stage of an electronic filing project. The first phase of the project is the development of requirements. The Tax Court Administrator and her staff have spent a great deal of time working with the Information Services Division and Oracle Corporation, an outside contractor, in an effort to complete the first phase of the project. It is anticipated that electronic filing will be a reality in the court in the very near future. Some of the benefits which can be anticipated from electronic filing would be the elimination of the labor-intensive work of paper movement and paper responses to litigants, immediate filing of complaints and other pleadings, almost immediate review and acceptance or rejection of filings, immediate access by judges and their staffs to new filings and improved customer service.

With an ever constant eye toward improving case processing, the court, in 1997, with the approval of the Supreme Court, implemented a pilot program for differentiated case management for local property tax cases in Bergen County. It was anticipated that differentiated case management would enable the Tax Court to make better use of judicial resources by reserving judges' time for functions requiring a judge's effort. To date, with the cooperation of the tax community, the court's experience with the pilot program has been extremely favorable. Case processing has become more efficient even though there has been less judicial involvement. Ninety-seven percent of the total filings for 1997 have been resolved to date which leads to the conclusion that cases are being resolved at an

earlier time than in past years. The success of the Bergen County pilot project has resulted in a recommendation to be made by the Supreme Court Committee on the Tax Court in its next report to the Supreme Court that the pilot program be expanded to include local property tax cases for properties situated in Hudson County beginning January 1, 2000 to coincide with the year 2000 tax appeal period.

THE COURT.

The Tax Court of New Jersey is a trial court with statewide jurisdiction. The court was established in 1979 by the Legislature under Art. VI, ' 1, & 1 of the New Jersey Constitution, as a court of limited jurisdiction, to hear matters relating to state tax and local property tax assessments. The enabling legislation can be found in *N.J.S.A.* 2B:13-1 to -15. The court reviews the actions and determinations of assessors and county boards of taxation with respect to local property tax matters and of all state officials with respect to state taxes.

In addition to hearing Tax Court cases, the judges of the Tax Court are, from time to time, assigned to hear Superior Court cases in which their special expertise can be utilized. *See N.J.S.A.* 2B:13-2b. In this court year, they heard and disposed of a number of Superior Court cases, many of which were tax-related cases. It is anticipated, however, that the filings in the Tax Court will continue to decline and that will permit Tax Court judges to hear more tax-related Superior Court cases.

Examples of the types of Superior Court cases which are appropriate for Tax Court judges to

hear include: (1) actions in lieu of prerogative writs seeking review of the conduct of municipal officials relating to the administration of tax laws or the duties of tax assessors and tax collectors, (2) tenant tax-rebate cases, (3) appointments of receivers for nonpayment of real property taxes, (4) condemnation cases, (5) rent-leveling cases, (6) review of assessments for municipal improvements, (7) *in rem* tax foreclosure actions, and (8) complex real estate valuation issues in matrimonial cases.

The primary impetus for the creation of the Tax Court in 1979 was to afford taxpayers a prompt and impartial hearing and disposition of their disputes with governmental taxing agencies by a qualified body of judges. The original objectives of the Tax Court were to: (1) provide expeditious, convenient, equitable and effective judicial review of state tax and local property tax assessments, (2) create a consistent, uniform body of tax law for the guidance of taxpayers and tax administrators in order to promote predictability in tax law and its application, (3) make decisions of the court readily available to taxpayers, tax administrators and tax professionals, and (4) promote the development of a qualified and informed state and local tax bar. The court, during the twenty years of its existence, has succeeded in achieving substantially all of these goals. More important, the original objectives of the court will continue to guide the court in the future.

CASELOAD.

At the beginning of the court year the Tax Court had an inventory of 9,367 tax cases. Tax Court cases filed during the court year totaled 6,356, aggregating a total case inventory of 15,723 cases. Dispositions totaled 7,005, resulting in an inventory of 8,718 cases by the end of the court year.¹ The Tax Court judges have cleared the court's calendar for the fifth consecutive year. This performance continues to reflect the Tax Court's commitment to the prompt disposition of tax cases and has been accomplished as a result of the dedication, hard work, and the contributions of the Tax Court judges, their staffs and the Tax Court Management Office.

Following is a comparison of filings and dispositions of Tax Court cases for the past twenty years of the court's existence.

¹ These figures do not include miscellaneous tax applications and Superior Court cases assigned to Tax Court judges.

Year ended	Cases pending first day of period	Filings	Dispositions	Cases pending last day of period
8/31/80	26,000*	6,925	11,549	21,376
8/31/81	20,448*	8,343	15,564	13,227
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

* 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.

Following is an analysis of filings and dispositions for this court year. This is an analysis of Tax Court cases only and does not include Superior Court cases or miscellaneous tax applications.

A. Cases filed during the court year

Local property tax cases	95%
State tax and Equalization Table cases	5%

Over the last several years, local property tax cases have represented 89% to 99% of total filings and state tax cases 1% to 11% of total filings.

B. Cases filed by general category

1. Local property tax cases filed during the court year

Regular cases	56%
Small claims cases	44%

2. State tax and Equalization Table cases filed during the court year

State tax cases (other than homestead tax rebate and equalization table cases)	50%
Homestead tax rebate cases	47%
Equalization Table cases	3%

In addition, during the court year Tax Court judges heard and decided a number of Superior Court cases.

Detailed Tax Court statistics can be found in the Appendix.

THE JUDGES.

At the beginning of the court year, Hon. Michael A. Andrew, Jr., P.J.T.C., Hon. Francine I. Axelrad, J.T.C., Hon. Roger M. Kahn, J.T.C., Hon. Harold A. Kuskin, J.T.C., Hon. Peter D. Pizzuto, J.T.C. and Hon. Joseph C. Small, J.T.C. were assigned full-time to the Tax Court, while Hon. Angelo J. DiCamillo, J.T.C., Hon. Raymond A. Hayser, J.T.C. and Hon. Marie E. Lihotz, J.T.C. were assigned full-time to the Superior Court.

During the course of the court year, Hon. Joseph L. Foster, J.T.C. and Hon. James E. Isman, J.T.C. were appointed to the Tax Court and took their oaths of office in July 1998. Since the workload of the Tax Court did not require any additional judges at that time, Judge Foster was assigned full-time to the Superior Court, Ocean County, Family Part, while Judge Isman was assigned full-time to the Superior Court, Atlantic County, Criminal Part.

With the existing caseload and the anticipated continued decrease in Tax Court filings for the near future, the court will be able to maintain its operation on a current basis with the presently assigned six Tax Court judges.

The Tax Court maintains courtrooms and chambers for the judges assigned to the Tax Court in Hackensack, Newark, Morristown and Trenton. For the convenience of taxpayers, certain judges also

sit in courthouses in Freehold, Toms River, Camden and Atlantic City.

Each judge's courtroom staff is limited to a single court clerk who, in addition to normal courtroom duties, operates the sound-recording equipment. The use of a sound-recording system in the Tax Court has proven to be effective and cost efficient. It enables a travelling judge to move easily from one hearing location to another and provides the means for a judge's review of court proceedings in the preparation of written opinions. Moreover, sound recording has facilitated the hearing of motions, settlements and other matters on the record by telephone conference call. The Tax Court has been using telephone conferencing since 1986 to decrease the cost of litigation, eliminate the time wasted at the courthouse by attorneys waiting to be heard, and obviate the need for attorneys to travel to the courthouse in the first instance.

Work is continuing on the development of an individual computerized inventory system for each judge that would enable the judge and judge's staff to quickly learn the status of each open case using the data base furnished by the Management Office. This has been extremely helpful in the management and disposition of cases involving prior and subsequent tax years. The system will ultimately also provide each judge with an index of all published decisions of the Tax Court, as well as Supreme Court and Appellate Division decisions with respect to appeals of Tax Court decisions.

Since 1979, the judges of the Tax Court have met monthly to discuss substantive and procedural developments in the field of tax law and areas of mutual concern in the operation of the court. Most important, however, has been the discussion and consideration of opinions offered for publication in the *New Jersey Tax Court Reports* by the Tax Court judges. The judges of the Tax Court, since the creation of the court, have been encouraged to prepare written opinions in cases

presenting significant factual and legal issues. That philosophy continues today. Although each judge renders his or her own opinion in an assigned case, each judge will submit opinions to the other judges of the court for consideration and discussion at the monthly meetings. The Tax Court and its judges have in the past placed, and continue today to place, significant emphasis on the care with which these opinions are prepared. One of the original objectives of the court was the creation of a consistent body of tax law. It is through the publication of quality Tax Court opinions that this objective has been achieved by the court since its commencement.

In September 1998, three Tax Court judges joined tax judges from approximately twenty other states at the Eighteenth National Conference of State Tax Judges seminar in Cambridge, Massachusetts. The agenda for the conference provided numerous areas of mutual interest for tax judges which included the valuation problems inherent in wetlands, conservation land and nature preserves, ethical issues in tax litigation, school finance litigation, the effect of electric utility deregulations, electronic filing, state taxation of electronic commerce, alternative dispute methodologies, current developments in state taxation and recent developments in local property tax cases. The nineteenth annual conference has been scheduled for September 1999 in Portland, Oregon. It is anticipated that four Tax Court judges will participate in what appears to be a most informative session.

Many of the judges also participated in educational courses in property valuation and trial procedure. In addition, a number of the Tax Court judges were instructors for educational programs sponsored by the Institute for Continuing Legal Education, the New Jersey State Bar Association and Rutgers University.

THE TAX COURT MANAGEMENT OFFICE.

The Management Office is the administrative arm of the Tax Court. Its staff is responsible for the record keeping and case management functions necessary to move cases to disposition.

Accordingly, the Management Office accepts papers for filing as well as monitors and schedules cases.

Doris A. DeBiasi, the Tax Court Administrator, and her capable administrative assistant, Lynne Allsop, have ably guided the Management Office since July 1, 1993. The Management Office is divided into two case-management teams. These teams perform docketing, screening, data processing, calendaring, records management and administrative services and prepare Tax Court judgments. Each of the teams, at various stages in the litigation process, provide 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.

During the course of the past court year 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.

As previously indicated in this report, the Supreme Court approved a pilot program for differentiated case management for local property tax cases in Bergen County beginning January 1,

1997. It was anticipated that differentiated case management would enable the Tax Court to make better use of judicial resources by reserving judges' time for functions requiring a judge's effort. The management team responsible for Bergen County assumed much greater responsibilities for administrative case management activities with respect to the pilot program than had been the practice in the past.

To date, our experience with differentiated case management has been extremely positive. The case manager and members of the team performed many administrative tasks that heretofore were handled by the tax judge or a member of the judge's staff. Additionally, case processing has effectively improved even though there was 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 differentiated case management system. As a consequence, the Management Office is anxiously awaiting the expansion of differentiated case management to Hudson County for local property tax cases beginning January 1, 2000.

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 site. 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 for the court year ended June 30, 1998, 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 Bergen County differentiated case management pilot program, all differentiated case management forms, a small claims handbook for differentiated case management 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.

SUPREME COURT COMMITTEE ON THE TAX COURT.

The Supreme Court Committee on the Tax Court is composed of judges, members of the tax bar, tax administrators at the municipal, county and state levels, representatives of taxpayers and tax professionals organizations and others concerned with the administration and review of tax laws in New Jersey. From its inception, the Tax Court has had the benefit of the cooperation and advice of this Committee. It has been extremely helpful in identifying problem areas and offering solutions that have been implemented by changes in the court rules and the taxing statutes. The Committee provides a distinct sounding board for all the groups that have any dealings with the Tax Court or are affected by the decisions of the Tax Court. Most important, the Committee provides those recommendations for change that has kept, and will keep, Tax Court procedures current, efficient and respected by all concerned.

During the past court year, the Committee has conducted well-attended meetings and has been focusing on the following items and issues:

1. The Committee continued to review the court rules for the differentiated case management pilot program that was first made effective January 1, 1997 with respect to local property tax cases in Bergen County. The Committee, at its May 1999 meeting, approved a recommendation to be

submitted to our Supreme Court to modify two of the differentiated case management rules and extend the pilot program to include Hudson County beginning January 1, 2000.

2. The Committee reviewed and approved a recommendation to be made to the Supreme Court revising the small claims practice and procedure before the Tax Court.

3. The Committee also performed an overview of the Tax Court rules in general in order to determine whether any language inconsistencies or cross-references need to be corrected or any minor editorial changes are required.

4. The Committee reviewed issues relating to the adequacy of the information provided in notices of assessment sent to taxpayers, methods for calculating added assessments, the statutory amount for direct appeals to the Tax Court and procedures relating to dismissals for lack of prosecution before the county boards of taxation.

5. The Committee also prepared standard form interrogatories for use in farmland assessment and tax exemption cases which the committee recommended to the Tax Court for adoption pursuant to R. 8:6-1(a)(5).

Clearly, the Supreme Court Committee on the Tax Court affords a unique opportunity for taxpayers, tax practitioners and tax administrators to meet and discuss common problems and ways to improve the state and local property tax system.

STANDARDS OF ASSESSMENT AND LEGAL PRINCIPLES
UTILIZED BY THE TAX COURT IN 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 purchaser 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 the 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 year ended June 30, 1999 may be found in the local property tax opinions approved for publication in *New Jersey Tax Court Reports* during the year. These opinions are representative of the tax cases heard during the court year.

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 in *N.J.S.A. 54:3-26* and *:51A-8*, the failure to comply with an assessor's request for income information, 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 year were the following.

In *Charles Bonsangue v. Little Egg Harbor Tp.*, 17 *N.J. Tax* 439 (Tax 1998), the court held, first, that a municipal tax assessor was under no legal obligation to assess the subject properties for the 1997 tax year at the values determined by the county board for 1996, because the freeze act, *N.J.S.A. 54:3-26*, does not apply when the judgments have been appealed to the Tax Court. Second, the court concluded that the failure of the municipality to file a timely appeal of the 1997 tax assessments was a fatal jurisdictional defect and, in the absence of an appeal by the taxpayer, constituted a waiver of the municipality's right to litigate the 1997 assessment. Third, the court held that the freeze act may be invoked solely upon the request of the taxpayer, not the municipality, at the conclusion of the appeal period. As such, the tax assessor did not have the authority under *N.J.S.A. 54:51A-8* to increase the assessment for the 1997 tax year based upon the 1996 Tax Court judgment. Finally, the court concluded that a tax assessor has no involvement in the payment of taxes and no authority to change tax bills.

Black United Fund of New Jersey, Inc. v. East Orange, 17 *N.J. Tax* 446 (Tax 1998), held that a taxpayer was not entitled to either the historic site tax exemption under *N.J.S.A. 54:4-3.52*, or the

Green Acres tax exemption under *N.J.S.A. 54:4-3.6*, because it had not qualified for those exemptions on the assessing date for the tax year in question. In addition, the court held that, with respect to the Acharitable purposes@ and Amoral and mental improvement@ exemptions under *N.J.S.A. 54:4-3.6*, as revealed by the taxpayer's organizational documents, it was not organized exclusively for those exempt purposes.

Levitz Furniture Corp. v. Paramus Bor., 17 *N.J. Tax* 483 (Tax 1998), involved the valuation of a furniture store consisting of a warehouse and retail (showroom/office) space. The court held that in an income capitalization approach, market rent is not determined by the use of solely warehouse comparable rentals to value the warehouse portion of the property and solely retail showroom comparable rentals to value the showroom/office portion of the subject. Rather, market rent for the subject property must be derived from comparable rentals of properties containing both retail and warehouse space with adjustments made to account for differences between the comparables and the subject.

In ***Hillcrest Health Service System, Inc. v. Hackensack***, 18 *N.J. Tax* 38 (Tax 1998), the court held that an exemption from property tax provided under *N.J.S.A. 54:4-3.6* for real property used for hospital purposes was not available for property owned by a non-profit parent corporation of a using hospital when the parent's operations were not limited by its own corporate charter to support of the hospital.

MCI Telecommunications Corp. v. West Orange Tp., 18 *N.J. Tax* 26 (Tax 1998), involved a building which was constructed and utilized, as of the relevant assessment dates, as a high-tech telecommunications facility, with fourth-floor offices. The court held that unless the taxpayer could demonstrate otherwise, the property's highest and best use was its current use.

The court expressed the opinion that the taxpayer's argument that the subject was outmoded as a telecommunications facility was insufficient to prove a different highest and best use. The fact that the subject could be utilized for other purposes failed to establish a different highest and best use, in light of the fact that the subject was still used as originally intended. The court concluded that the cost approach was the only appropriate valuation method for this high-tech telecommunications facility.

In *American Cyanamid Company v. Wayne Tp.*, 18 N.J. Tax ____ (Tax 1998), the court held that an income approach was the primary methodology for valuing a 546,448-square-foot office complex located on 183.82 acres. The court noted that a cost approach can be considered, and will receive a detailed analysis, when both appraisers use it, and when, in the absence of adequate comparable sales data, a prospective owner-user would value the property using this approach.

Fimbel Door Corp. v. Readington Tp., 17 N.J. Tax 525 (Tax 1998), held that a county tax board's dismissal of a taxpayer's petition of appeal with prejudice for failure to comply with an assessor's request for income and expense information pursuant to N.J.S.A. 54:4-34 (chapter 91) did not constitute a "failure to prosecute" under N.J.S.A. 54:51A-1(c). Therefore, the taxpayer was not jurisdictionally precluded from pursuing a *de novo* appeal of its tax assessment in the Tax Court.

The court also held that the municipality may in the Tax Court proceeding renew its motion to dismiss for failure to comply with chapter 91 and the taxpayer was not procedurally foreclosed from contesting the renewed chapter 91 motion on the merits as a result of its having appealed the county board's tax assessment rather than specifically appealing the county board's determination of the chapter 91 motion.

In *Everest Reinsurance Co. v. Newark*, 18 N.J. Tax 50 (Tax 1998), the court held that Newark's assessment for municipal payroll tax against a statutorily exempt foreign insurance company had

no basis in fact or in law. The court also concluded that there was no authority to award interest on the refund despite the requirement that in order to dispute the assessment, taxpayer had to pay the tax and sue for a refund, and the city held over \$800,000 for almost six months.

Lastly, the court held that the awarding of fees to plaintiff's attorney was authorized under *N.J.S.A.* 54:51A-22, a provision of the State Tax Uniform Procedure Law, as amended by the Taxpayers' Bill of Rights, *L. 1992, c. 175*, and made applicable to the Newark city payroll tax by *N.J.S.A.* 40:48C-38. Since the city's position was without reasonable basis in fact or in law, plaintiff was a prevailing taxpayer, and thus, entitled to attorneys' fees and costs.

Wilshire Oil Co. of Texas v. Jefferson Tp., 17 *N.J. Tax* 583 (Tax 1998), held that the Morris County Board of Taxation should not have dismissed the taxpayer's appeal for lack of prosecution when the taxpayer's attorney appeared at the scheduled hearing and requested an adjournment due to the unavailability of a witness, and the county board had adequate time to re-schedule the hearing. The court also noted that the county board improperly precluded the taxpayer from calling the assessor as a witness.

In ***MSGW Real Estate Fund, LLC v. Mountain Lakes Bor.***, 18 *N.J. Tax* ____ (Tax 1999), the court held that an office building built by Newsweek for its own use is appropriately valued by using an income approach. The sales comparison approach, based upon sales from owner-users to owner-users, is a reliable indicator of value when the highest and best use of the property is for single-user occupancy. The sales comparison approach, however, based upon sales to investors, has limited reliability as an indicator of value when the highest and best use of the property is for multiple-tenant occupancy, because the sales prices are influenced by the level of occupancy and actual rents in the sale buildings. If the sales comparison approach is used for a multiple-tenant occupancy building, the appraiser must adjust the sales prices to

reflect a market occupancy level at market rents.

The court also noted that the sale of the subject property by Newsweek to an investor was not a reliable indicator of value because Newsweek was motivated more by a desire to dispose of an excess property than by a desire to maximize the sales price.

In ***Batcha v. Hopewell Tp.***, 18 *N.J. Tax* 1 (Tax 1997), the plaintiff-taxpayer sought a retroactive farmland assessment pursuant to *N.J.S.A. 54:4-23.13c*. The court entered a judgment dismissing plaintiffs complaint for retroactive farmland assessment relief, pursuant to *N.J.S.A. 54:4-23.13c*, because plaintiff failed to establish that the tax assessor had denied farmland assessment on the basis that the boarding and training of horses was not an agricultural use which met the eligibility requirements of *N.J.S.A. 54:4-23.3*.

In ***Rockstone Group v. Lakewood Tp.***, 18 *N.J. Tax* _____ (Tax 1999), the court held that in order to be entitled to a plenary hearing in an effort to defeat a freeze act application under *N.J.S.A. 54:51A-8*, a municipality must set forth a *prima facie* demonstration of a change in value indicating that: (1) a change in value resulted from an internal or external change, (2) the change materialized after the assessment date of the base year, and (3) the change substantially and meaningfully increased the value of the property.

The court concluded that a conditional planning board approval constituted an external change subsequent to the assessment date of the base year (October 1, 1996) and the evidence presented in opposition to the freeze act application created a *prima facie* demonstration of a change in value. As such, the municipality was entitled to a plenary hearing to determine whether the change in value was sufficient to preclude the freeze sought by the taxpayer.

Lenal Properties, Inc. v. Jersey City, 18 *N.J. Tax* _____ (Tax 1999), held that, in deciding a

motion under *R. 4:37-2(b)* at the close of the plaintiff's proofs in a property tax assessment appeal, the court must determine whether the plaintiff has overcome the presumption of validity applicable to the assessment by accepting the plaintiff's proofs as true and according them all favorable inferences. The court also noted that in order to reconcile the values produced by an income approach and a sales comparison approach, the court must exercise its judgment and expertise. A mathematical weighting analysis would not produce greater precision, because the weighting factors would be determined by a similar exercise of the court's judgment and expertise.

Van Wingerden v. Lafayette Tp., 18 *N.J. Tax* ____ (Tax 1999), held that the phrase "working, office or sales space" as used in *N.J.S.A. 54:4-23.12(a)*, a provision in the Farmland Assessment Act, refers to space which is not used for purposes or functions essential and inherent to the growing or storage of agricultural or horticultural crops.

In *Spiegel v. Harrison*, 18 *N.J. Tax* ____ (Tax 1999), the subject property consisted of a main warehouse facility, built in 1938 with a recently constructed addition, as well as three significantly smaller industrial buildings. The court held that, since the sales comparison approaches to valuation utilized by both parties were based on comparable sales which were too dissimilar to the subject property, the income capitalization analysis was the only reliable method of valuation. The court also concluded that the lease of the subject property was not reliable as evidence of market rent and that the comparable leases used by both expert witnesses were net leases which demonstrated that the market generally used net leases as opposed to gross leases.

In *Paulison Ave. Assoc. v. Passaic*, 18 *N.J. Tax* _____ (Tax 1999), the court held that *R. 8:7(e)*, which sets time limits for the filing of motions under *N.J.S.A. 54:4-34* (chapter 91), is a rule of

procedure validly adopted by the Supreme Court. The court also concluded that the rule applies retrospectively to appeals pending as of its effective date. Lastly, the court refused to relax the rule where the municipality provided no explanation for its failure to file its chapter 91 motion sooner than over four months after the effective date of the rule, and over three months after expiration of the time limit established by the rule.

MSGW Real Estate Fund, LLC v. Mountain Lakes Bor., 18 N.J. Tax ____ (Tax 1999), held that when a taxpayer litigates appeals of property tax assessments for 1997 and 1998 to a conclusion, the taxpayer may not select the judgment for 1997 as the base year judgment under N.J.S.A. 54:51A-8 (the freeze act). The base year judgment for application of the freeze act is the judgment for the last litigated year, in this case, 1998.

In ***Tiffany Manor Assocs. v. Newark***, 18 N.J. Tax ____ (Tax 1999), the court held that the calculation of a payment in lieu of taxes, under the New Jersey Housing and Mortgage Finance Agency Law (N.J.S.A. 55:14k-37b), is governed by the financial agreement between the housing sponsor and the city and the implementing municipal resolutions. The court noted that the statute is silent on how to interpret agreements that do not specify the treatment of taxes on the land and read the governing documents to provide for a credit in the amount of the taxes on the land against the total amount of the payment in lieu of taxes. Thus, the total payments due to the city were the calculated payment in lieu of taxes, not the payment in lieu of taxes plus land taxes. The housing sponsor's argument that the land was exempt from taxation was rejected.

STATE TAX CASES.

State tax cases decided during the court year include those dealing with the sales and use tax, gross income tax and the corporation business tax. Among the published state tax opinions the following were the most significant.

In *Liberty Mutual Ins. Co. v. Director, Div. of Taxation*, 17 N.J. Tax 457 (Tax 1998), the court held that the annual surtax imposed by N.J.S.A. 17:33B-49(a) for the years 1990, 1991 and 1992 did not constitute a "special purpose assessment" under N.J.S.A. 17:32-15. Accordingly, payments of the annual surtax must be credited in calculating a foreign insurer's liability for the retaliatory tax imposed pursuant to N.J.S.A. 17:32-15.

Schirmer-National Co. v. Director, Div. of Taxation, 17 N.J. Tax 495 (Tax 1998), held that receipts from the sales of burglar alarm monitoring systems are subject to the New Jersey sales and use tax, N.J.S.A. 54:32B-2 and -3. In addition, the court also held that individual notice of statutory enactments is not required because individuals are put on notice of legislative enactments on the date the legislation becomes effective. Ignorance of the law is simply no excuse.

In *Amplicon, Inc. v. Director, Div. of Taxation*, 18 N.J. Tax _____ (Tax 1998), the court held that a claim for a refund of a tax paid after an assessment by the Division of Taxation under the New Jersey Sales and Use Tax Act must be made within ninety days of the assessment. N.J.S.A. 54:32B-19. The court also concluded that the four-year statute of limitations governing refunds, N.J.S.A. 54:32B-20, did not apply after an assessment has been made. Last, the court held that the discovery of the factual basis for the refund claim after the expiration of the ninety-day period would not extend the ninety-day deadline.

In *Seventeen Thirty Corp. v. Director, Div. of Taxation*, 18 N.J. Tax ____ (Tax 1999), the court held that in order to determine whether, in computing *Net income* as defined in N.J.S.A. 54:10A-4(k) of the Corporation Business Tax Act, sporadic payments by a corporation to its sole shareholder/president/store manager were deductible compensation or non-deductible dividends, the two-pronged test used for federal income tax purposes was applicable. The components of the test were: (1) whether the amounts paid constituted reasonable compensation, and (2) whether the payments were intended to be compensation. In general, the reasonableness test subsumes the compensatory intent test. In this case, the payments were conceded to constitute reasonable compensation, and the evidence was insufficient to establish a lack of compensatory intent. Consequently, the payments constituted deductible compensation.

The court also concluded that the required purchase of a minimum of \$3 of tokens in order for a patron to enter the viewing booth area of the plaintiff's premises constituted the payment of an admission charge to or for the use of [a] place of amusement under N.J.S.A. 54:32B-3(e)(1), and was subject to sales tax. Deposits of tokens into the viewing devices were not subject to sales tax because the deposits did not constitute payments of admission charges, and the devices were not places of amusement. Furthermore, because the devices would accept no more than one token (having a value of 25 cents) at a time, even if the deposits were admission charges to or for the use of a place of amusement, each deposit did not exceed 75 cents, the statutory minimum for imposition of a sales tax.

James Construction Co. v. Director, Div. of Taxation, 18 N.J. Tax ____ (Tax 1999), involved appeals from assessments under the Gross Income Tax Act (N.J.S.A. 54A:1-1, *et seq.*) and the Unemployment Compensation and Temporary Disability Benefits Law (N.J.S.A. 43:21-1, *et seq.*). The

Commissioner of Labor moved to dismiss the appeal of the Labor Department assessment for lack of jurisdiction. The court held that the Tax Court of New Jersey did not have jurisdiction to hear appeals from assessments for unemployment compensation and temporary disability benefits made by the Commissioner of Labor, pursuant to *N.J.S.A. 43:21-11*. *N.J.S.A. 2B:13-1* through -15 did not expand the Tax Court's jurisdiction to hear this type of case. The court concluded that the plaintiff failed to exhaust its administrative remedies within the Department of Labor and at the Office of Administrative Law. The court also held that the entire controversy doctrine did not extend the jurisdiction of the Tax Court to hear this case.

APPEALS FROM TAX COURT DECISIONS.

A. SUPREME COURT OF NEW JERSEY.

During the court year, the Supreme Court was presented with fifteen Tax Court cases. The Court denied certification in nine cases, granted certification in one case and dismissed two cases. Three matters were withdrawn by the parties. The Supreme Court rendered a decision in one Tax Court case, *Koch v. Director, Div. of Taxation*, 150 N.J. 1 (1999).

The Court held that, in calculating the gain or taxable income from the sale of a partnership interest under the Gross Income Tax Act, the basis used to determine the gain cannot be federal adjusted basis when that basis has been reduced by losses that are not deductible under the Gross Income Tax Act, but rather would be the taxpayer's cost basis unreduced by partnership losses.

Any income tax imposed on an amount greater than the taxpayer's economic gain represents a tax on a return of capital. The Court held that, with respect to gains on the disposition of property, the

Legislature intended to tax only income and not the return on capital.

Pending consideration in the Supreme Court, at the present time, is the matter of *Playmates Toys, Inc. v. Director, Division of Taxation*, 316 N.J. Super. 509 (App. Div. 1998), *certif. granted*, 158 N.J. 73 (1999).

In *Playmates Toys, Inc.*, the Division of Taxation audited Playmates= corporation business tax returns for tax years 1989 through 1992 and issued a notice of assessment stating that the amount of \$24,893 was due the State but that Playmates had made overpayments of \$88,356. The amount owed to the State was offset leaving a balance of overpayments by Playmates of \$63,463. Playmates was advised that the \$63,463 was not available for refund because it was beyond the applicable statutory period for a refund at that time (then 2 years - it is now 4 years under the Taxpayers= Bill of Rights, N.J.S.A. 54:49-14).

Playmates filed a protest with the Conference and Appeals Branch of the Division and separately claimed a refund with the Corporation Business Tax Refund Section of the Division. These were filed at the same time but without reference to each other. The Refund Section paid the claimed refund of \$63,463.

The Conference and Appeals Branch, after learning of the mistakenly paid refund, issued a final determination upholding the original notice of assessment which provided that it was too late for Playmates to claim the refund and directed Playmates to return the \$63,463.

In both the Tax Court and Appellate Division, Playmates, although conceding that the claim for refund was filed beyond the statute of limitations, contended that the Director could not recover the refund payment once it was disbursed because there was no statutory authority permitting it. The Tax Court held that the Director had the inherent authority to recover a mistaken disbursement even though there was no express statutory power to recoup funds disbursed in error. The Appellate Division agreed.

B. APPELLATE DIVISION OF THE SUPERIOR COURT.

During the court year, appeals were filed with the Appellate Division of the Superior Court from 58 Tax Court decisions. The number of Tax Court cases appealed to the Appellate Division over the past twenty years is:

1970-1980	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

During the court year, decisions were rendered by the Appellate Division in 57 Tax Court cases. The Appellate Division took the following action:

Affirmed	22
Dismissed	15
Reversed & Remanded	6
Reversed	1
Motion for leave to appeal denied	1
Reinstatements	2
Total Dispositions	57

PUBLICATION OF TAX COURT OPINIONS.

A key objective of the court is to make Tax Court decisions available to taxpayers, the tax bar, tax administrators and other tax professionals. Ready access to these opinions assists in tax planning, tax administration and tax enforcement by improving predictability. Summaries of opinions approved for publication are published in the *New Jersey Law Journal* and the *New Jersey Lawyer*. "Slip" opinions are produced and made available by the Tax Court Management Office. West Publishing Company publishes the opinions in the *New Jersey Tax Court Reports* and issues advance sheets prior to publication of these

reports.

Volume 17 of the *New Jersey Tax Court Reports* was published in April 1999. Volume 18 will be issued in the 2000-2001 court term. The *New Jersey Tax Court Reports* contain state tax and local property tax opinions, as well as Appellate Division opinions which decide appeals from Tax Court decisions and are not published in the Superior Court Reports. The Appellate Division decisions are, therefore, published in the *New Jersey Tax Court Reports* to complete the record.

In addition to the publication of Tax Court opinions in the *New Jersey Tax Court Reports*, Tax Court opinions are available on the Internet home pages of the state Judiciary and the Rutgers-Camden Law School Internet site. These opinions can be accessed at www-camlaw.rutgers.edu or www.state.nj.us/judiciary and can be read online or downloaded in a word-processing format. At present, users have to search for opinions by means of the names of cases, key words or phrases. It is anticipated, however, that eventually opinions will be grouped and made available by court and date of release.

RECOMMENDATIONS FOR LEGISLATIVE CHANGES.

Based on the cases heard by the court, it appears that the system for review of state and local tax disputes is generally functioning satisfactorily. The court's experience with taxpayers, tax attorneys and tax administrators, however, has demonstrated that the state and local tax system can be improved with certain legislative changes.

Recommendations for legislative changes have been made by the Supreme Court Committee on the

Tax Court in its biennial report for the 1996-1997 and 1997-1998 court years. These recommendations have been incorporated in *Senate Bill 673* (1998-1999) which was approved by both the Senate and General Assembly on June 21, 1999. The bill has been sent to the Governor for approval. The recommended legislative changes in *Senate Bill 673* include the following:

1. Permit added or omitted assessments exceeding \$750,000 to be appealed directly to the Tax Court, as are regular assessments.

2. Provide for uniform procedure with respect to the requirement for payment of taxes as a prerequisite to maintaining an appeal of an assessment.

3. Provide for extension of time for appeal when notice of the local property tax assessment is not timely delivered to the taxpayer.

4. Amend *N.J.S.A. 54:3-26* and *54:51A-8* (freeze act) to make it clear that the freeze act applies to a judgment only when the time for all appeals from the county tax board or Tax Court judgment has expired.

5. Amend *N.J.S.A. 54:3-26* and *54:51A-8* (freeze act) to make it clear that the binding effect of the freeze act terminates with the tax year immediately preceding the year in which a complete reassessment of all real property within a municipality has been implemented.

6. Provide for additional exceptions to the binding effect of the freeze act.

7. Amend *N.J.S.A. 54:4-49(a)* to include the words "regional and" to the first sentence following "for purposes of" and preceding "consolidated school districts." It appears these two words were unintentionally deleted when the Public School Education Act of 1975, *N.J.S.A. 54:4-49(a)*, was enacted in 1975.

8. Amend *N.J.S.A. 54:4-3.3e, Dispute as to apportionment or payment of taxes: jurisdiction of Superior Court:determination: order*, to substitute the Tax Court for the Superior Court in the title and text of this statute.

9. Amend *N.J.S.A. 54:51A-2*. The last sentence, which refers to listing a case for trial "on or after April 1 next following the filing of the complaint" is now inconsistent and unnecessary. It should be deleted.

10. Amend *N.J.S.A. 54:51A-9b* to change the filing deadline for direct appeals to the Tax Court from August 15 to April 1.

CONCLUSION.

The Tax Court judges, the Tax Court Administrator and their staffs have worked diligently and efficiently throughout the year. The work of the court has been accomplished with a high level of quality. Most important, the original objectives of the court have been largely achieved. These original objectives continue to be the court's guiding standards. The public has been well served because the court has contributed, in large measure, to the efficient administration of the tax laws of the State. The court's commitment for the future is a continuation of the quality of the court and the service that it renders to the citizens of the State of New Jersey.

Michael A. Andrew, Jr.
Presiding Judge of the
Tax Court of New Jersey

Dated: August 10, 1999

APPENDIX.

ANNUAL REPORT OF THE
PRESIDING JUDGE OF THE TAX COURT OF NEW JERSEY
FOR THE COURT YEAR ENDED JUNE 30, 1999.

	<u>Page No.</u>
Tax Court cases pending, filed and disposed	1a
Character of complaints filed	1b
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

Tax Court of New Jersey

July 1, 1998 - June 30, 1999

A. Tax Court cases pending, filed and disposed:

	Local Property Tax	State Tax	Equali- zation & related	Totals
1. Cases pending as of first day of period	8,963	404	0	9,367
2. New cases filed during period	6,053	293	10	6,356
Subtotal	15,016	697	10	15,723
3. Cases disposed	6,778	217	10	7,005
4. Pending as of last day of period	8,238	480	0	8,718

		1a	
B.	Character of complaints filed		
1.	<u>Local property tax</u>		
	Regular	3,370	
	Small claims	<u>2,683</u>	
			6,053
2.	<u>Cases other than local property tax</u>		
a.	<u>State tax</u>		
	Regular	143	
	Small claims	<u>150</u>	
			293
	<u>Type of tax</u>		
	Business Personal Property	1	
	Cigarette	1	
	Corporation Business	45	
	Corporation Income	1	
	Gross Income	51	
	Gross Receipts	1	
	Homestead Tax Rebate	142	
	Inheritance	6	
	International Fuel Tax Agreement	1	
	Litter Control	5	
	Miscellaneous	5	
	Motor Fuel Sales	2	

Railroad Franchise 1
Sales and Use 31

b. Equalization and related

Regular 10
Small claims 0
10
Type of case
Equalization (county) 1
Table of equalized
valuation (school aid) 6
Order to revalue 3
6,356

1b

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

	6/30/93	6/30/94	6/30/95	6/30/96	6/30/97	6/30/98	6/30/99
Atlantic	459	633	543	229	219	168	130
Bergen	2,587	2,801	2,994	1,799	1,456	1,457	1,219
Burlington	164	113	147	101	88	55	82
Camden	196	189	131	129	166	114	86
Cape May	298	135	518	94	74	44	21
Cumberland	35	26	17	21	18	22	13
Essex	1,443	1,584	1,737	1,082	1,073	1,138	1,094
Gloucester	73	96	93	102	57	58	55
Hudson	1,989	2,302	1,482	1,653	1,281	977	842
Hunterdon	79	58	41	50	54	42	50
Mercer	209	220	214	184	164	84	91
Middlesex	986	1,032	783	863	710	513	298

Monmouth	712	1,231	911	525	332	243	199
Morris	1,246	734	536	499	320	363	441
Ocean	486	467	361	195	267	146	82
Passaic	1,078	1,228	783	759	712	613	735
Salem	34	24	31	20	26	11	11
Somerset	348	266	294	141	115	108	72
Sussex	434	244	86	72	48	63	77
Union	775	835	747	639	513	504	417
Warren	80	0	43	54	33	46	38
TOTALS	13,711*	14,218*	12,492*	9,211	7,726	6,769	6,053

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

1c

Summary of Tax Court Action
in Review of Local Property Tax Assessments

July 1, 1998- June 30, 1999

Total Assessments on Direct Appeal Complaints reviewed by Tax Court	\$15,479,080,969
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Total Assessments as determined by County Tax Board judgments reviewed by Tax Court	\$ 1,870,156,091
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Total Assessments for Correction of Errors reviewed by the Tax Court	<u>\$ 11,764,200</u>
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Total Local Property	<u>\$17,361,001,260</u>
Assessments Reviewed	