

# TAX COURT OF NEW JERSEY



## **ANNUAL REPORT OF THE PRESIDING JUDGE OF THE TAX COURT OF NEW JERSEY JULY 1, 2006 - JUNE 30, 2007**

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, 2006 through June 30, 2007. The last annual report of the Presiding Judge of the Tax Court covered the period July 1, 2005 to June 30, 2006.

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## I.

### INTRODUCTION & HIGHLIGHTS

In the 2006-2007 court year there were 10,664 filings in the Tax Court of New Jersey, more cases than filed in any year since the court year ended June 30, 1995. Dispositions totaled 8,283 cases, more dispositions than in any year since the court year ended June 30, 1998. Total dispositions per year have increased by 1,564 cases or 23% since the court year ended June 30, 2005. The productivity per judge per year has increased by 43% to almost 1,400 cases (over six cases per judge per working day) in the last two years. Nevertheless, the inventory of cases continues to grow, in part, because of the failure to fill a vacancy created in the Tax Court with the retirement of Judge Kahn on June 30, 2005, over two years ago. Since Judge Kahn's retirement, the remaining six judges are working harder, disposing of a greater number of total cases, and a greater number of cases per judge. The inventory of 15,596 cases at the end of the 2007 court year has grown by 7,543 or approximately 94% since the court year ended June 30, 2001. Filings are expected to increase in the court year 2007-2008. Thus, despite the strong efforts of the Judges of the Tax Court, their chambers' staff, and the staff of the Tax Court Management Office resulting in substantially increased productivity over the last few years, it is unlikely that the inventory of unresolved cases can do anything but increase until additional judges are appointed or assigned to the Tax Court.

The Judges of the Court are aging. Four of the six sitting judges are over 60 years old. One is 59 years old. One of the judges must retire in 2009, two will be eligible to retire in early 2008 and two of the remaining three judges may well retire within three years. It is imperative that new judges be appointed to (a) deal with the increasing caseload and to (b) assure litigants that the judges who will replace the retiring judges are trained and have some experience on the Tax Court before the court loses its senior judges.

## II.

### THE COURT

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. Over the past twenty-eight years the court has disposed of over 240,000 cases by deciding disputes between taxpayers and New Jersey governments, and clarifying the law for those who might be in doubt. By publishing over 1,100 of its opinions the court has enabled those with disputes to avoid unnecessary litigation. 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. Thus, the court continues to play a vital role in the ever changing tax administration, tax policy, and tax law of this state. Judges of the Tax Court also hear Superior Court cases. The special expertise of its judges has helped resolve complex issues relating to valuation of assets and business relations.

In the period since the last annual report of June 30, 2006, the Tax Court 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 in the Appendix and discussed briefly in this section and the section captioned “Caseload” reveals an increase in filings and growth in inventory resulting from the continuing decline in the value of commercial property, and an increase in the value of residential property substantially greater than changes in the value of other classes of property.<sup>1</sup>

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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. Also, because of the way in which the statutes regarding assessments are structured, if residential property values increase more rapidly than general property values and municipalities do not reassess their properties or conduct a revaluation, the assessments of commercial properties must be reduced and that is accomplished by the filing of a tax appeal. N.J.S.A. 54:51A-6 and L. 1973 c. 123 (Chapter 123).

During the 2006-2007 court year the judges assigned to the Tax Court were Presiding Judge Joseph C. Small and Judges Vito L. Bianco, Raymond A. Hayser, Harold A. Kuskin, Gail L. Menyuk, and Peter D. Pizzuto. The Tax Court continues to have a vacancy, as a new judge has not yet been appointed to replace Judge Roger M. Kahn, who retired at the end of June 2005, over two years ago. At the writing of this report, that vacancy which has been known about for over thirty months and actually vacant for twenty-six months is having an adverse impact on our ability to dispose of even standard (non-complex) cases within the eighteen to twenty-four month period the court and the tax bar have set for ourselves. More complex cases are expected to take longer than two years to resolve, but our inability to resolve standard track cases within twenty-four months of filing is directly attributable to the failure to nominate and confirm a judge to fill an over two-year-old vacancy.

The Judges maintain chambers and hear cases in Hackensack, Newark, Morristown, and Trenton. In general, each Judge is designated to hear cases from specific counties. Cases are then assigned according to the location of the property whose assessment is being challenged. This year there were 10,644 filings, more than in any year since 1995. With six judges, the court was able to dispose of 8,283 cases this past year, more than in any year since 1998. Our standard is to have each judge dispose of between 1,000 and 1,200 cases per year. In the past year each judge averaged almost 1,400 dispositions. (approximately six cases for each working day). See pages 14 to 15 and Appendix page 1b for a discussion and table of the productivity of the judges for the past eleven years.

Anticipated increased filings due to a continued decline in the commercial real estate market relative to the residential market, and a number of substantial municipal revaluations, leads me to anticipate a continued modest increase in our inventory of cases. Once a judge is appointed to replace Judge Kahn, we should be in a position to keep current with the caseload

unless there is a marked increase in filings. In that case, we may need to request the assignment of an additional judge or judges to the Tax Court. Since four of the six judges assigned to the Tax Court are over 60 years old and four of the six judges may or must retire within four years, it is essential that new judges be appointed to the court so that when the older judges leave there is a cadre of experienced judges remaining.

Of the twelve authorized Tax Court Judges, three have been temporarily assigned to the Superior Court Trial Division and two to the Appellate Division. Each of the three trial judges has established himself in his 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 five 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 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 when and if the need becomes acute.

For the 2006-2007 court year, Differentiated Case Management (DCM) (a system of uniform and efficient case management similar to best practices in the Superior Court) continued as a pilot program. All complaints filed are now subject to the new DCM rules and procedures. Prior to January 1, 2005, this uniform system of case management was in operation for local property tax cases in Bergen and Hudson counties for eight and three years, respectively. Since this past year was only the second full year that DCM had been implemented statewide, policies and procedures still needed to be evaluated. Thus, to adequately assess the implementation of DCM, the Supreme Court Committee on the Tax Court recommended to the Supreme Court that DCM continue as a pilot program for the next biennial cycle. The Supreme Court approved this recommendation effective September 1, 2006. It is anticipated that as the DCM program continues, the efficiency of the Tax Court will increase due to earlier case disposition, greater

uniformity of procedures among the judges, and a reduction in the judges' current administrative (non-adjudicative) functions. It is hoped that at the end of this current Supreme Court Committee term (June 30, 2008) the Committee will be able to recommend with some small revisions, implementation of DCM as a permanent program.

The following Table 1 categorizes filings and dispositions for the court year 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. An examination of the table shows that the vast majority of the court's cases involve local property tax. Of those, the overwhelming number of cases relate to non-residential property. The small claims category is defined by Court Rule as one to four family houses. Most disputes relating to those properties are adequately resolved at the twenty-one County Boards of Taxation. Although the non-property tax cases are a relatively small percentage of the court's volume of work, their relative complexity makes them less susceptible to settlement and requires judicial time out of proportion to their numbers.



CATEGORIES OF CASES FILED  
COURT YEAR 2006-2007

A. Cases filed by general category

Local property tax cases	94%	(10,067 cases)
State tax and Equalization Table cases	6%	(597 cases)
Total	100%	(10,664 cases)

B. Local property tax cases filed during the court year

Regular cases	82%	(8,289 cases)
Small claims cases	18%	(1,778 cases)
Total	100%	(10,067 cases)

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

State tax cases (other than Homestead Rebate & related cases & Equalization Table cases)	36%	(215 cases)
Homestead rebate & related cases	63%	(373 cases)
Equalization Table cases	1%	(9 cases)
Total	100%	(597 cases)

More detailed Tax Court statistics for the 2007 court year can be found in the Appendix.

### III.

#### THE TAX COURT MANAGEMENT OFFICE

The Tax Court Management Office is the administrative arm of the Tax Court. Cheryl A. Ryan has been the Clerk/Administrator since her appointment on October 1, 2005. This office 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, prepares calendars and judgments, responds to attorney and litigant inquiries, and provides procedural guidance.

The office is comprised of three case management teams that are responsible for docketing, screening, data processing, calendaring, records management, and administrative services. Each team 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 cases.

Historically, the Supreme Court of New Jersey approved a pilot program for DCM 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. These pilot programs anticipated that DCM would enable the Tax Court to make better use of judicial resources by reserving the judges' time for functions requiring their expertise and allowing more administrative functions to be handled by personnel other than judges.

Our experience with DCM in Bergen and Hudson Counties was extremely positive. The

case management teams performed many administrative tasks that were previously handled by the judges or their staff. Additionally, case processing improved and judges were relieved of some of the administrative burdens associated with case management.

Since the Supreme Court of New Jersey's approval of the statewide implementation of the DCM pilot program in January 2005, the Tax Court has been diligent in implementing the new rules and continues to evaluate policies and procedures for improved efficiency. As DCM has been fully implemented for only two years, it is premature to provide a detailed analysis of its effectiveness. At this time, it appears that DCM is having the intended result; increased uniformity of procedures throughout the Tax Court and a reduction of current administrative (non-adjudicative) functions for the judges and their staffs. It is anticipated that this program will also expedite the resolution of cases as there will be trial date certainty.

The Tax Court Management Office continues to make significant improvements to its automated case management system, especially with respect to the court's statistical reporting abilities and management of DCM cases. The enhancements have enabled the court to perform more meaningful analyses of filings, dispositions, caseload assignments, and time frames that ultimately will aid the court in its ability to meet the demands of litigants. Training and encouraging chambers' staff to fully utilize the system has also facilitated calendar management.

In addition to making Tax Court opinions available through the Rutgers-Camden Law School internet site, opinions may also be accessed through the State Judiciary and Tax Court websites. This provides opinions to the public as soon as they are published. The following reports and information are also available on the Tax Court website: all state and local property Tax Court forms, the Rules of the Tax Court, small claims handbooks for DCM and non-DCM cases, the Tax Court's standard form interrogatories, as well as the Annual Reports of the Presiding Judge and the Biennial Reports of the Supreme Court Committee on the Tax Court.

Links to access the state's twenty-one county boards of taxation are also available on-line. It is anticipated that the website will continue to expand to include Tax Court judgment data with a docket number search feature.

#### IV.

#### CASELOAD

#### A.

#### FILINGS AND DISPOSITIONS

Table 2 in the Appendix (page 1a) summarizes the twenty-eight year history of filings and dispositions of Tax Court cases. At the beginning of the 2007 court year, the Tax Court had an inventory of 13,120 cases. Tax Court cases filed during the court year totaled 10,664 and 95 previously closed cases were reinstated. Thus, the aggregate total number of cases in inventory was 23,897. Dispositions for the court year totaled 8,283 cases, resulting in an inventory of 15,596 cases at the end of the court year.<sup>2</sup> Due to several years of increased filings, the Tax Court Judges were not able to clear the calendar. However, the court accomplished much by resolving 35% of the pending caseload and by issuing opinions on several notable cases (see page 18, “Standards of Assessment and Legal Principles Utilized by the Tax Court.”) The total current inventory constitutes a little less than two years of dispositions at the current rate of dispositions. That is consistent with our objective of closing standard cases within eighteen months to two years after filing. At the current time, approximately 18% of the court’s caseload is more than two years old. That is accounted for by the number of complex cases and the fact that there has been a judicial vacancy for over two years. If that vacancy had been filled and the judge occupying it were closing cases at the same rate as our current judges we would have cleared 90% of our calendar and have fewer older cases on the docket.

The section of this report captioned “The Court” (page 4) explains the reasons for the increasing inventory: (1) A decline in commercial property values relative to residential property values; (2) the implementation of revaluations in a number of large municipalities that

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

have not had revaluations for a very long time; (3) an increase in the number of tax appeals due to items (1) and (2); and (4) a declining number of judges assigned to hear tax cases. The only one of these factors we can hope to influence is the number of judges. As prior sections of this report have indicated, we have introduced more efficient case management procedures (DCM) which have enabled each judge to be more productive and in part, compensate for the current vacancy and the fact that not all judges appointed to the Tax Court are assigned to hear tax cases.

B.

PRODUCTIVITY

Table 3 in the Appendix (page 1b) indicates the number of dispositions per Tax Court Judge per year for the past eleven years. The column captioned “# of judges” needs some explanation. Over the history of the court, judges have been appointed, retired, and resigned at times other than the beginning and end of a court year. When the real estate market was robust (approximately 1986-1990) the number of court filings declined and some of the Tax Court Judges were assigned almost full-time to hear Superior Court cases. For several years before his retirement, Judge Evers was ill and did not hear any cases. After their retirement, Judges Lasser and Lario were on recall and carried almost a full load of cases. Thus, the final column, “dispositions per Judge”, is less than perfectly accurate.

In the first three years of this court’s existence (when it was disposing of a large number of cases backlogged from the old Division of Tax Appeals) and the years ending June 30, 1993 and June 30, 1995 (when the previous years’ filings had reached all time highs), productivity per judge was very high. Dispositions per judge in the past two court years (2005-2006 and 2006-2007) are greater than they have been in any of the past eleven years. Since Judge Kahn’s retirement in 2005, filings have also increased, especially in the past year. The increase in the number of total dispositions, as well as dispositions per judge reflects the significant efforts of the judges and the staff to respond to both the decline in the number of judges and the increase in filings. Thus, despite disposing of cases at near record rates, the six judges currently sitting in the Tax Court can neither keep up with the increased filings nor reduce the number of unresolved cases.

It should be noted that dispositions per judge per year is not the sole measure of the quantity and quality of this court's work. Only a small portion of our detailed written and oral opinions are reported in Volumes 1 to 23 of the *New Jersey Tax Court Reports*. The statistics support my requests, pleas, and cries for the appointment of new judges to the Tax Court.



C.

APPEALS FROM TAX COURT DECISIONS

1. SUPREME COURT OF NEW JERSEY

During the 2006-2007 court year, the Supreme Court was presented with ten Tax Court cases. The court denied certification in seven cases, granted certification in two and granted one Motion for Leave to Appeal. The court rendered opinions in three Tax Court matters.

A-134-04

American Fire & Casualty Co. v. NJ Div. of Taxation  
189 N.J. 65 (2006)

Held that the Director of the Division of Taxation's interpretation of the interaction of the Insurance Premiums Retaliatory Tax and the cap on the amount of the premiums tax was incorrect. Thus, the tax liability of the insurance companies was reduced.

A-89-05

Lanco, Inc. v. Director, Div. of Taxation  
188 N.J. 80 (2006)  
Certiorari Denied  
127 S. Ct. 2974 (2007)

Held that the Commerce and Due Process Clauses of the United States Constitution did not prohibit the imposition of New Jersey's Corporation Business Tax on a corporation that received royalties from the use of its trademarks in New Jersey despite its not having any physical presence in New Jersey.

A-64-06

Tp. of Holmdel v. NJ Highway Authority  
190 N.J. 74 (2007)

Held that the amphitheater of the Garden States Arts Center was exempt from local property taxation and that the reception center was not exempt from local property tax.

## 2. APPELLATE DIVISION OF THE SUPERIOR COURT

During the 2006-2007 court year, appeals from 38 Tax Court decisions were filed with the Appellate Division of the Superior Court. Table 4 (page 1c) provides the number of Tax Court cases appealed to the Appellate Division over the past twenty-eight years. Table 5 (page 1d) shows the disposition of Tax Court cases by the Appellate Division during the 2006-2007 court year.

V.  
STANDARDS OF ASSESSMENT AND LEGAL  
PRINCIPLES UTILIZED BY THE TAX COURT

A.  
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).

Opinions are reported in New Jersey Tax Court Reports. As of the date of this report, there are 22 complete volumes and recent opinions are being published in Volume 23.

Significant local property tax cases decided during this court year included:

Millburn Tp. v. Short Hills Assocs., 23 N.J. Tax 311 (Tax 2007). The Tax Court held that a taxpayer was not entitled to have its tax assessments frozen under the New Jersey Freeze Act, N.J.S.A. 54:51A-8, because a zoning change in its favor that had been adopted but was not yet effective by October 1 of the pre-tax year was one of the designated events under N.J.S.A. 54:51A-8 that would prevent the taxpayer from enjoying the protections of the Freeze Act.

Borough of Totowa v. Passaic County Bd. of Taxation, 2007 N.J. Tax LEXIS 9 (June 1, 2007). The Tax Court held that a county board of taxation properly ordered a borough to implement a municipal-wide revaluation under N.J.S.A. 54:3-13 and N.J.S.A. 54:4-47. The Board could rely on some, but not all, of the criteria set forth in N.J.A.C. 18:12A-1(b)(1) in determining that a revaluation was warranted. The Board's findings were adequate to support its order.

Presbyterian Homes at Pennington, Inc. v. Pennington Borough, 2007 N.J. Tax LEXIS 10 (June 14, 2007). The Tax Court held that an assisted living residence did not qualify for exemption for tax year 2002 because it was not actually operated on the valuation date of October 1, 2001. The residence did not qualify for exemption for tax years 2003 and 2004 because the property was not used for "hospital purposes" within the meaning of N.J.S.A. 54:4-3.6.

## B.

### STATE TAX CASES

State tax cases decided during the court year covered by this report include those dealing with the Gross Income Tax, the Corporation Business Tax, the Sales and Use Tax and the Estate Tax.

The following published opinions of state tax cases were among the most significant.

Clorox Prods. Mfg. Co. v. Director, Div. of Taxation, 23 N.J. Tax 260 (Tax 2006). The court held that a parent corporation whose subsidiary had not taken a depreciation deduction in excess of straight line depreciation could not be forced, on acquisition of the assets from its subsidiary, to reduce its depreciable basis to what it would have been, had the subsidiary taken the accelerated depreciation.

Pfizer, Inc. v. Director, Div. of Taxation, 2007 N.J. Tax LEXIS 8 (June 1, 2007). The court noted that the issue of whether to grant a motion for leave to appear as amicus curiae was one of public importance, but declined to exercise its discretion under R. 1:13-9 to allow a second taxpayer to appeal as amicus curiae because (1) this would delay the progress of the instant action; (2) its participation would materially increase the burdens on the Director in the instant

litigation; (3) there would be a risk of inconsistent results in the two appeals; (4) the second taxpayer, since it would not be bound by any ruling in the instant case, could unfairly reserve some arguments until it filed a summary judgment motion in its own appeal; and (5) the first taxpayer was fully competent to litigate the constitutional issue, and under the circumstances, the second taxpayer's participation as amicus would not "assist in the resolution" of that issue.

Delmarva Power & Light Co. v. Director, Div. of Taxation, 23 N.J. Tax 188 (Tax 2006). The Tax Court held that a taxpayer was not liable for the Franchise and Gross Receipts Tax (F&GRT) for tax years 1994 through 1997 as it had no retail sales in New Jersey but was liable for the Corporation Business Tax (CBT) despite being a public utility since exemption from the CBT under N.J.S.A. 54:10A-3(f) required the taxpayer to have actually paid F&GRT.

## VI.

### 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, Esquire.

The committee fulfills a vital role in its advisory capacity by developing and recommending rule changes affecting the conduct of the court and the litigants who file cases with the court. The committee continues to review the rules governing the small claims practice of the Tax Court, to comment on proposed legislation and when necessary, make 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 2006. Its next report will be filed in January 2008. In the 2006 report, the committee recommended to the Supreme Court that it approve several clarifying modifications to the current rules, as well as continuing DCM as a pilot program statewide for at least another biennial cycle. These recommendations were approved and promulgated, effective September 1, 2006. The following rules were modified:

- R. 8:2(c) - Exhaustion of Remedies Before County Board
- R. 8:5-3(a) - Service of Complaint
- R. 8:12 - Payment of Filing Fees

During this past year (the first of the current two year term of the Committee) the Committee has undertaken a final review and edit of the proposed rules for the DCM Pilot Program. It is anticipated that the Supreme Court Committee at its final meeting for this cycle, will recommend to the Supreme Court that the pilot program be fully adopted into the Court Rules.

## VII.

### CONCLUSION

For over twenty-eight years, the Tax Court of New Jersey, established in 1979, has provided a forum for the resolution of tax disputes between New Jersey taxpayers and their governments. All of the original judges appointed in 1979 and 1980 are now retired. The institution established by them has proven to be a useful and enduring part of this State's tax structure, a place where aggrieved citizens, businesses, and governments can have their tax disputes impartially and fairly heard and resolved. The work of the court is reported in the 23 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 detailed understanding by litigants, taxpayers, and taxing authorities of the tax laws of New Jersey and a reduction in the number of uncertain issues of tax law. Nevertheless, new issues arise and must be resolved, new statutes are enacted and must be interpreted, and the application of existing laws to new business practices requires analysis. Factual issues (such as "what is the value of real property?") will be the subject of disputes as long as taxes are imposed on those values. 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. The Legislature may soon be engaged in a major examination of alternatives to the current constitutional, legislative, and administrative system of property taxation in New Jersey. 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 help resolve disputes as they arise on a case-by-case basis and to build on over twenty-eight years of experience embodied in the written decisions of this court by utilizing the special qualifications, knowledge, and experience of its judges as required by N.J.S.A. 2B:13-6(b).

This report is a public summary of the work of the Tax Court of New Jersey during the court year 2006-2007. By statute, it is addressed to the Chief Justice. Since this is the first report of the Tax Court to Chief Justice Rabner, I want to call particular attention to the acute need for the Governor and State Senate to nominate and confirm a qualified individual to fill the vacancy that has existed for over two years and to be prepared to nominate and quickly confirm other qualified judges as our aging bench (myself included) departs by voluntary or mandatory retirement, resignation, or death. (Over the twenty-eight year history of this Court, we have experienced the departure of judges attributable to each of these four causes. They are neither rhetorical nor hypothetical).

As presiding judge, it is my responsibility to see to an orderly plan of succession. Unfortunately, I depend on the unpredictable actions of the other branches of government. To contemplate the weakening of this court by their concerted inaction is most frustrating. In 1979 Governor Byrne nominated and the State Senate confirmed excellent judges. Succeeding administrations have appointed some judges who have carried on the original judges' work and some who, despite holding tenured positions in the Tax Court, have never heard a Tax Court case. It is now the collective responsibility of the Governor and State Senate to "step up to the



plate” and assure the continued quality and vigor of this court by nominating, confirming, and appointing judges who meet the requirements of N.J.S.A. 2B:13-6(b).

Respectfully submitted,

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

September, 2007

## **APPENDIX**

**TABLE 2**  
**Twenty-Eight Year History of Tax Court Filings and Dispositions**

Year ended	Pending first day of period	Filings	Dispositions	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
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
6/30/04	9,268	8,105	5,973	11,400
6/30/05	11,400	7,332	6,719	*12,282
6/30/06	12,282	8,205	7,533	* 13,120
6/30/07	13,120	***10,759	8,283	*15,596

\* 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.

\*\*\* Includes 95 matters that were reinstated. The actual number of new cases filed was 10,664.

**TABLE 3**  
**TAX COURT OF NEW JERSEY PRODUCTIVITY**  
**DISPOSITIONS PER JUDGE 1997-2007**

Year ended	Pending first day of period	Filings	Dispositions	Pending last day of period	# of Judges (full time equivalents)	Dispositions per Judge
6/30/97	14,085	7,954	10,406	11,633	9 for 6 months – Hamill deceased 12/1996; Crabtree retired 6/1997; (does not include Axelrad part-time)	1156
6/30/98	11,633	7,124	9,390	9,367	8 for 10 months – Axelrad appointed full time to Tax Court; Rimm retired 2/1998; Dougherty resigned 5/1998	1174
6/30/99	9,367	6,356	7,005	8,718	6	1168
6/30/00	* 9,069	5,386	6,702	7,753	6	1117
6/30/01	7,753	4,815	4,515	8,053	4 – Axelrad appointed to Appellate Division 6/2000; Andrew retired 10/2000	1129
06/30/02	8,053	5,952	5,932	8,073	5 – Bianco appointed 8/2001	1186
6/30/03	8,073	6,639	5,444	* 9,268	6 – Menyuk appointed 8/2002	907
6/30/04	9,268	8,105	5,973	11,400	7 – Hayser transferred to Tax Court	853
6/30/05	11,400	7,332	6,719	12,282	7 – Kahn retired 6/2005	960
6/30/06	12,282	8,205	7,533	* 13,120	6	1256
6/30/07	13,120	10,759	8,283	15,596	6	1381

\* Adjusted to reflect year-end physical case inventory.

**TABLE 4****TAX COURT CASES APPEALED TO THE APPELLATE DIVISION****1979-2007**

<b>Court Year</b>	<b>Number of Cases</b>
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
2003-2004	34
2004-2005	41
2005-2006	46
2006-2007	38

**TABLE 5**

**ACTIONS TAKEN BY APPELLATE DIVISION ON TAX COURT CASES**

**COURT YEAR 2006-2007**

<b>Action</b>	<b>Number of Cases</b>
<b>Affirmed</b>	<b>32</b>
<b>Dismissed</b>	<b>11</b>
<b>Reversed &amp; Remanded</b>	<b>1</b>
<b>Motion for leave to appeal denied</b>	<b>3</b>
<b>Reversed</b>	<b>4</b>
<b>Remanded</b>	<b>2</b>
<b>Affirmed in Part/Reversed in Part</b>	<b>2</b>
<b>Total Dispositions</b>	<b>55</b>

**TABLE 6**

**TAX COURT CASES PENDING, FILED AND DISPOSED**  
**COURT YEAR 2006-2007**

	<b>Local Property Tax</b>	<b>State Tax</b>	<b>Equalization &amp; related cases</b>	<b>Totals</b>
<b>Cases pending as of first day of period</b>	<b>12,553</b>	<b>567</b>	<b>0</b>	<b>13,120</b>
<b>New cases filed during period</b>	<b>10,067</b>	<b>588</b>	<b>9</b>	<b>10,664</b>
<b>Reinstated</b>	<b>84</b>	<b>11</b>	<b>0</b>	<b>95</b>
<b>Subtotal</b>	<b>22,704</b>	<b>1,166</b>	<b>9</b>	<b>23,879</b>
<b>Cases disposed</b>	<b>7,736</b>	<b>539</b>	<b>8</b>	<b>8,283</b>
<b>Pending</b>	<b>14,968</b>	<b>627</b>	<b>1</b>	<b>15,596</b>

TABLE 7

**CHARACTER OF COMPLAINTS FILED**  
**COURT YEAR 2006-2007**

1.	<b><u>Local Property Tax</u></b>	<b><u>FILED</u></b>	<b><u>REINSTATED</u></b>
	Regular	8,289	79
	Small Claims (one to four family houses)	1,778	5
	<b>Total</b>	<b>10,067</b>	<b>84</b>
2.	<b><u>Cases Other than Local Property Tax</u></b>		
	<b><u>State Tax</u></b>		
	Regular	210	8
	Small Claims (mostly homestead Rebates & related cases)	387	3
	<b>Total</b>	<b>597</b>	<b>11</b>
		<b>10,664</b>	<b>95</b>
	<b><u>Type of Tax</u></b>		
	Corporation Business	37	
	Cigarette	3	
	Emergency Response Fee	1	
	Equalization Table	9	
	Estate Tax	9	
	Gross Income	40	
	Homestead Rebate	268	
	Inheritance Tax	4	
	Litter Tax	1	
	Mansion Tax	3	
	Motor Fuels Use	2	
	NJ Saver	15	
	Property Tax Reimbursement	90	
	Railroad Franchise	2	
	Railroad Property	1	
	Realty Transfer Fee	15	
	Supplemental Security Assessment	1	
	Sales and Use	84	
	Transfer from Superior Court	2	
	10-day Deficiencies	10	
	<b>Grand Total</b>	<b>597</b>	



**TABLE 8**

**BREAKDOWN BY COUNTY OF LOCAL PROPERTY TAX COMPLAINTS FILED**  
**2001-2007**

	6/30/01	6/30/02	6/30/03	6/30/04	6/30/05	6/30/06	6/30/07
Atlantic	63	99	59	90	53	78	148
Bergen	871	986	946	1,222	1,475	1,553	2,080
Burlington	55	54	52	69	97	120	115
Camden	62	68	80	75	69	96	137
Cape May	33	12	30	32	48	56	116
Cumberland	18	12	13	6	16	14	22
Essex	927	1,059	**1,433	**2,357	1,471	1,617	2,226
Gloucester	37	48	52	53	57	59	70
Hudson	458	381	645	457	412	439	424
Hunterdon	43	48	76	53	34	54	71
Mercer	63	78	79	103	91	153	222
Middlesex	204	248	339	464	536	752	896
Monmouth	179	265	292	375	488	487	537
Morris	411	486	690	563	560	583	574
Ocean	98	391	97	131	180	268	718
Passaic	494	592	298	486	446	480	757
Salem	10	6	7	15	13	10	24
Somerset	147	296	269	164	212	271	229
Sussex	19	79	77	44	31	39	74
Union	296	346	338	456	519	526	586
Warren	58	43	48	49	44	55	41
<b>TOTALS*</b>	<b>4,546</b>	<b>5,597</b>	<b>5,920</b>	<b>7,264</b>	<b>6,852</b>	<b>7,714</b>	<b>10,067</b>

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

**\*\* Large increase due to Newark revaluation**