

Taxpayer's failure to make payments required by rule held not an absolute jurisdictional bar to appeal, but issue must be crystallized by municipality through appropriate defensive pleadings, a motion to dismiss or the institution of foreclosure proceedings; statute requires all taxes due for a current tax year to be paid prior to the entry of judgment by the county board of review (citing former rule). *Verden Realty Management Co. v. City of East Orange*, 5 N.J.Tax 637 (Tax Ct.1985).

Rule requires all petitions of appeal to a county board of taxation to contain the taxpayer's name and address; mailing of judgment to the post office address listed on petition, in the absence of attorney representation, or, if the address is lacking, to the post office address listed in the municipal tax records is procedurally proper; service by mail is presumed complete on the date of mailing. *Tolentino v. Oxford Tp.*, 4 N.J.Tax 173 (Tax Ct.1982).

Rule on acceptance of appeal by county tax board requiring a resolution to be appended to a county board petition for the board to have subject matter jurisdiction is not mandatory; factual issue as to whether a borough ever adopted a resolution authorizing an appeal precludes summary judgment for the taxpayer. *Fair Lawn Boro. v. Blue Hill Associates*, 3 N.J.Tax 55 (Tax Ct.1981).

### 18:12A-1.7 Filing fees

(a) A filing fee in the amount determined by N.J.S.A. 54:3-21.3 must accompany each petition of appeal filed by the taxpayer and shall be computed on the basis of the total assessment including both lands and improvements, if any.

(b) The filing fee for adding assessment appeals shall be based upon the apportioned valuation indicated on the tax list and duplicate as the prorated assessment.

(c) No filing fee shall be required to contest the denial of an application for:

1. A veteran's deduction;
2. A veteran's widow's deduction;
3. A property tax deduction for persons of the age of 65 or more years, or less than 65 years of age who are permanently and totally disabled and certain surviving spouses;
4. An exemption of a disabled veteran or a widow of a disabled veteran; or
5. A homestead tax rebate.

(d) Where an appeal involves assessments of more than one property, separate petitions of appeal shall be filed for each property separately assessed unless prior permission has been obtained from the board and a separate fee shall be paid for each property for which an appeal has been filed. Where permission is granted pursuant to N.J.A.C. 18:12A-1.6 for the filing of one petition for appeals involving more than one property the filing fee payable shall be an amount equal to the amount that would have been payable had individual petitions been filed separately for each parcel of property.

As amended, R.1980, d.148, effective April 9, 1980.  
See: 12 N.J.R. 161(a), 12 N.J.R. 293(d).

### 18:12A-1.8 Petitions; commercial, industrial properties or multi-dwelling appeals

(a) There shall be annexed to a petition of appeal from an assessment of a commercial, and industrial property or a multi-dwelling (that is, more than a four-family dwelling) an itemized statement showing all sources of income and expenses with respect to such property for the most recently completed accounting year and for such additional years as the board may request.

(b) No appeal shall be heard from the assessor's valuation and assessment with respect to income producing property where the owner has failed or refused to respond to such written request or to testify on oath when required, or shall have rendered a false or fraudulent act.

(c) The board may impose such terms and conditions for furnishing the requested information where it appears that the owner, for good cause shown, could not furnish the information within the required time.

As amended, R.1975 d.46, eff. March 6, 1975.  
See: 7 N.J.R. 74(c), 7 N.J.R. 180(b).

### 18:12A-1.9 Hearings

(a) The Administrator, with the approval of the board, shall prepare a calendar assigning dates and times for hearings and shall not grant adjournments except for good cause shown.

(b) The board shall give at least 10 days' notice of the time and place of hearing of the appeal to the petitioner, assessor and attorney of the taxing district.

(c) The board may continue hearings from time to time, if necessary.

(d) The board shall permit a petitioner (other than a corporation or a taxing district) to appear in an appeal in his own behalf. No person shall be permitted to appear in an appeal in a representative capacity unless said person is duly licensed to practice law in this State; provided, however, that an attorney of any other jurisdiction of good standing there, may appear at the discretion of the board in any matter subject to the provisions of rule 1:21-2 of the Rules Governing the Courts of New Jersey. This rule may be waived in cases of extreme hardship; that is, old age, illiteracy and the like.

(e) A petitioner shall be prepared to prove his case by completion and competent evidence. In the absence of some evidence, the board may dismiss the petition. In the case of failure to appear, the board may dismiss the petition for lack of prosecution.

(f) When a case is set down for hearing, the assessor of the taxing district involved shall attend said hearing together with counsel for the taxing district, unless the board shall in individual cases decide otherwise.

(g) Where the assessed valuation is determined by the "capitalization of income" method, the assessor shall produce at the hearing a copy of the property record card for the property under appeal, showing his computation of the capitalization of income.

(h) A party intending to rely on expert testimony shall furnish to the board three copies of a written appraisal report and shall furnish one copy of the appraisal report to each opposing party at least one week prior to the hearing. If the municipality intends to rely on its tax assessor or a representative of a revaluation company as its expert and if such testimony will involve data and analysis which is not reflected on the property record card, the municipality shall furnish to the board three copies of a written report reflecting such data and analysis and shall furnish one copy of the report to each opposing party at least one week prior to the hearing. At the request of a taxpayer-party, the municipality shall also furnish that party with a copy of the property record card for the property under appeal at least one week prior to the hearing. The board in its discretion and in the interest of justice may waive the requirements for the submission of written reports.

(i) Any settlement agreed upon between the parties shall be in writing, on a form approved by the Director, Division of Taxation, signed by the parties or their attorneys and shall indicate if the assessor is in agreement with the settlement. Such proposed settlement shall include the basis for the settlement and shall be submitted to the board for approval without the necessity for an appearance by the parties or their attorneys unless the board requests such an appearance by the parties or their attorneys. If the board approves the settlement, the board shall enter judgment in accordance with the terms thereof. If the board disapproves the settlement, the board shall notify the parties of such disapproval and schedule a hearing date for the appeal.

(j) The board may, as occasion shall require, by order, refer any appeal or other matter pending before it to one or more of its members for the purpose of taking testimony and reporting thereon to the board for appropriate action.

(k) No person shall testify at a hearing of the board concerning an assessment unless he shall have inspected the property.

(l) No assessor shall appear before the board as an expert witness against another assessor or taxing district within the State except to defend the assessment of his taxing district.

As amended, R.1975 d.46, eff. March 6, 1975.

See: 7 N.J.R. 74(c), 7 N.J.R. 180(b).

As amended, R.1979 d.14, eff. January 16, 1979.

See: 10 N.J.R. 517(c), 11 N.J.R. 105(d).

As amended, R.1984 d.330, eff. August 6, 1984.

See: 16 N.J.R. 1330(a), 16 N.J.R. 2153(a).

Deleted old (h) and inserted new.

Subsection (i) substantially amended.

As amended, R.1984 d.580, eff. December 17, 1984.

See: 16 N.J.R. 2760(a), 16 N.J.R. 3480(b).

(f): Deleted "or a member of the board of assessors" from text.

#### Case Notes

Taxpayer's failure to timely serve appraisal upon opposing counsel before second scheduled county tax board hearing after receiving extension from first hearing date did not constitute "failure to prosecute". *Jepson Refrigeration Corp. v. City of Trenton*, 295 N.J.Super. 492, 685 A.2d 505 (A.D.1996).

Taxpayer's counsel appeared before county tax board and called local assessor as witness; administrative property tax appeal was not subject to dismissal for failure to prosecute, and tax court had jurisdiction over taxpayer's request for de novo review; where letter to counsel, in manner consistent with administrative regulation, warned only of dismissal for failure to appear. *VSH Realty Inc. v. Harding Tp.*, 291 N.J.Super. 295, 677 A.2d 274 (A.D.1996), also published at 15 N.J.Tax 653.

Statute barring judicial review if administrative appeal to county tax board was dismissed for failure to prosecute did not supersede or vitiate regulation providing for dismissal in case of failure to appear before board. *VSH Realty, Inc. v. Harding Tp.*, 291 N.J.Super. 295, 677 A.2d 274 (A.D.1996), also published at 15 N.J.Tax 653.

Dismissal for failure to prosecute was not warranted by appearance of taxpayer's attorney on scheduled hearing date to request that county board of taxation adjourn or affirm without prejudice where there was no indication that prejudice to board would result from adjournment, and taxpayer was prepared to proceed on adjourned hearing date. *ARP Realty Associates v. Washington Borough*, 16 N.J.Tax 281 (1997).

Board of taxation's mailing of notice of hearing to address different in significant respects from that specified in written notification from taxpayer's attorney did not constitute adequate notice and did not create presumption that notice was received. *Family Realty Co. v. Secaucus Town*, 16 N.J.Tax 185 (1996).

Failure of taxpayer's attorney to appear before board of taxation in support of appeal from local property tax assessment, after board had advised attorney that it would not grant adjournment or affirmation without prejudice, warranted dismissal of taxpayer's appeal. *West Essex Sav. & Loan Ass'n v. Montville Tp.*, 16 N.J.Tax 152 (1996).

No proof of value adduced by taxpayer; tax court could reasonably conclude that there was de facto failure to prosecute property tax appeal before county board of taxation, foreclosing further judicial review. *Ganifas Trust v. Wildwood City*, 15 N.J.Tax 722 (A.D.1996).

County board of taxation properly dismissed taxpayer's appeal from commercial real property assessments for failure to prosecute; taxpayer did not submit appraisal report prior to second hearing date after receiving five-week extension from first hearing date. *Jepson Refrigeration Corp. v. Trenton City*, 15 N.J.Tax 467 (1996).

Taxpayer's submission of appraisal one day before date for hearing on his tax appeal was not "egregious" violation of rules for bringing tax appeal, and county board of taxation's dismissal of taxpayer's appeal on that basis was improper. *Pipquarryco, Inc. v. Hammond Borough*, 15 N.J.Tax 413 (1996).

Taxpayers presented evidence regarding recent sale price; county tax board could not dismiss case for lack of prosecution; tax court not barred from hearing valuation case on appeal. *VSH Realty, Inc. v. Harding Tp.*, 14 N.J.Tax 379 (1994).

Municipality's appraisal expert could testify in challenge to real property assessments. *Jablin v. Northvale Borough*, 13 N.J.Tax 103 (A.D.1991).

New Jersey taxation of Missouri corporation with minimum nexus to New Jersey did not violate commerce clause. *Mark Andy, Inc. v. Taxation Div. Director*, 8 N.J.Tax 593 (1986).

Small relative size of New Jersey revenue generated by Missouri corporation did not preclude imposition of business tax. *Mark Andy, Inc. v. Taxation Div. Director*, 8 N.J.Tax 593 (1986).

Missouri corporation that actively solicited New Jersey customers was "doing business" in New Jersey for tax purposes. *Mark Andy, Inc. v. Taxation Div. Director*, 8 N.J.Tax 593 (1986).

**18:12A-1.10 Subpoenas**

Subpoenas to compel the attendance of witnesses and the production of books and records at hearings shall be furnished by the board without cost upon request.

**18:12A-1.11 Record of proceedings**

The board may record all proceedings before it involving tax appeals, and, if recorded, shall furnish a transcript of the record of any appeal to any party to that appeal upon request, and upon payment of a reasonable fee to be fixed by the board.

**18:12A-1.12 Determination; judgments**

(a) A majority of the members of the board shall constitute a quorum for the transaction of business, and any action or determination agreed to by such majority shall be taken as the action of the board.

(b) In order to provide for a more orderly appeal procedure, county boards of taxation shall, effective immediately, institute the procedures herein described with respect to the issuance of judgments.

**1. Valuation appeals.**

i. The judgment shall indicate separately the assessed value of the land, improvements and the total of same.

ii. The judgment shall also indicate the determination of the county board of taxation separately for land, improvements and total.

iii. In the case of affirmance or dismissal and there is no change in valuations, the judgment shall indicate, in lieu of (b)1ii above, the words "Affirmed" or "Dismissed", or any phrase indicating an appropriate disposition.

2. Other appeals. In all appeals not involving property valuations, the judgment shall indicate the county board's disposition, as appropriate.

**3. Written memorandum of judgment.**

i. The President of the Board shall have the responsibility for overseeing the writing of the written memorandum of judgment required pursuant to R.S. 54:3.26, and each memorandum shall be under his signature as well as the signature of any other member of the board who participated in the rendering of the county board judgments on appeal.