

# **TAX COURT OF NEW JERSEY**



## **ANNUAL REPORT OF THE PRESIDING JUDGE OF THE TAX COURT OF NEW JERSEY JULY 1, 2008 - JUNE 30, 2009**

The Tax Court of New Jersey  
P.O. Box 972  
Trenton, N.J. 08625

Web page: [www.judiciary.state.nj.us/taxcourt](http://www.judiciary.state.nj.us/taxcourt)

# TAX COURT OF NEW JERSEY

JOSEPH C. SMALL, J.T.C.  
(retired and temporarily assigned on recall)



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October 30, 2009

Honorable Stuart Rabner, Chief Justice  
Supreme Court of New Jersey  
Richard J. Hughes Justice Complex  
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Trenton, New Jersey 08625

**RE: Annual Report of the Tax Court of New Jersey for the Year ended June 30, 2009**

My Dear Chief Justice:

Pursuant to N.J.S.A. 2B:13-11, I am pleased to send you my final Annual Report of the Tax Court of New Jersey.

To briefly summarize the highlights of the report and the actions that need to be taken to assure that the court can promptly and thoughtfully resolve the increasing number of tax disputes between the citizens of New Jersey and its 566 municipal taxing authorities and the state:

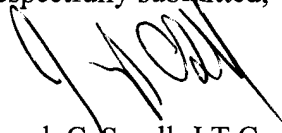
- The inventory of cases, 25,893 at year end, is higher than at any time since the court was established thirty years ago in 1979.
- Over 16,000 complaints were filed, a 36% increase over the prior court year ended June 30, 2008 – and more than in any year since court year 1992.
- As of November 1, the three longest serving judges at the beginning of calendar year 2009 will have retired.
- Two judges have been appointed to fill those three vacancies. The Governor and State Senate need to fill the remaining vacancy.
- Honorable Patrick DeAlmeida was named Presiding Judge effective October 1, 2009.

- To deal with the increasing caseload, due to the decline in the value of real estate, and both turnover and vacancy in Judges, the court will need either increased technical support, an increased number of judges assigned to hear tax cases, or both if it is not to fall hopelessly behind in resolving cases. Cases being filed as of this date are now being assigned trial dates in the second half of calendar year 2011, a full two years from the date of filing.

Despite these problems and needs, the court has a new cadre of bright, enthusiastic judges, it has new leadership and I have every confidence that it will continue its reputation as one of, if not, the best State tax courts in the nation. I am proud and honored to have served for over 18 years, nine of which have been as Presiding Judge. Presiding Judge DeAlmeida brings new energy, new ideas, and a wealth of both legal and managerial experience to the increasingly difficult demands that will be made on the Tax Court. I hope and trust that the demands that he will make for technical and other support and for additional Judges will meet with a positive response in this difficult budgetary climate.

The citizens of New Jersey come into contact most often with their state and municipal governments at the Division of Motor Vehicles and at the tax offices. If their legitimate grievances with the taxing authorities are not fairly and promptly considered and resolved, the fabric and legitimacy of those governments will be grievously damaged. I trust that you, the Administrative Office of the Courts, the Governor and the legislature can be responsive to the needs of this court in the years to come.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Small', written over a horizontal line.

Joseph C. Small, J.T.C.  
(retired and temporarily assigned on recall)

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## I.

### INTRODUCTION & HIGHLIGHTS

In the 2008-2009 court year, there were 16,016 filings in the Tax Court of New Jersey, more cases than filed in any year since the court year ended June 30, 1992. Dispositions totaled 8,808 cases, more dispositions than in any year since the court year ended June 30, 1998. Total dispositions per year have increased by 2,089 cases or 31% since the court year ended June 30, 2005. Although productivity per judge per year decreased slightly from last year, it is still over six cases per judge per working day. The inventory of cases continues to grow, in part, because of the over two years it took to fill the vacancy created with the retirement of Judge Kahn on June 30, 2005, and in part due to the 36% increase in filings from the prior year. The inventory of 25,893 cases at the end of the 2009 court year has grown by 17,840 or approximately 222% since the court year ended June 30, 2001, and over 39% (7,286 cases) since the end of last year. Filings are expected to increase in the court year 2009-2010. 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 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 and/or more efficient case processing methods are introduced.

In the period from June 1, 2009 through November 1, 2009 (ending four months after court year 2009), three of the seven sitting judges have retired or will retire. Two new judges have been appointed to fill those three vacancies. Thus, at November 1, there will be one vacancy. The Chief Justice has appointed a new Presiding Judge as of October 1, 2009. Thus, despite the energy and skills of the newly appointed judges, the court will need additional judicial and clerical personnel and a more automated case processing system if it is

to have any hope of not falling hopelessly behind in the prompt processing of an exponentially increasing caseload.

## 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 thirty years, the court has disposed of over 250,000 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 taxation and valuation of assets in business, matrimonial, foreclosure, condemnation, and other related cases.

In the period since the last annual report of June 30, 2008, 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 decline in the value of commercial and residential 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 (as was happening in the

During the 2008-2009 court year the judges assigned to the Tax Court were Presiding Judge Joseph C. Small and Judges Patrick DeAlmeida, Vito L. Bianco, Raymond A. Hayser, Harold A. Kuskin, Gail L. Menyuk and Peter D. Pizzuto. At the end of the court year Judge Kuskin retired and the vacancy created by his retirement was filled by the Appointment of Judge Mala Narayanan on July 27, 2009. After the court year ended, Presiding Judge Small retired. The Chief Justice appointed Judge DeAlmeida as Presiding Judge effective October 1, 2009. The governor nominated and the senate confirmed, Judge Joseph A. Andresini to the vacancy created by Judge Small's retirement and he assumed his office on October 1, 2009. Judge Pizzuto will retire on November 1, 2009. No one has been nominated to fill the vacancy created by his retirement.

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 and municipalities. Cases are then assigned according to the location of the property that's assessment is being challenged. This year there were 16,016 filings, more than in any year since 1992. With seven judges, the court was able to dispose of 8,808 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 about 1,258 dispositions (approximately six cases for each working day). See pages 12 and 13 and Appendix page 1b (Table 3) for the productivity of the judges for the past thirteen years.

Anticipated increased filings due to a continued decline in the commercial and residential market, and a number of substantial municipal revaluations, leads me to anticipate a continued substantial increase in our inventory of cases. Absent the addition of judges assigned to this court and/or the implementation of more efficient case processing systems,

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period up to court year 2007-2008) 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).

the inventory with predicted increased filings cannot and has not avoided substantial growth. It is essential that new judges be appointed or transferred, and/or improved case processing procedures be introduced if the court is not to fall hopelessly behind.

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 to remain 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. An alternative would be for the Chief Justice to assign temporarily, a qualified Superior Court Judge or Judges to the Tax Court as the need has now become acute.

With the approval of the Supreme Court, the Local Property Tax Differentiated Case Management Pilot Program was discontinued and the Tax Court DCM Program Rules were permanently merged and integrated into the regular rules set forth in Part VIII of the Court Rules, effective September 1, 2008. Differentiated Case Management (DCM) is a system of uniform and efficient case management with objectives similar to those of best practices in the Superior Court. It is anticipated that formalizing the new Rules will continue to improve the efficiency of the Tax Court, resulting in earlier case disposition, greater uniformity of procedures among the judges, and a reduction in the judges' current administrative (non-adjudicative) functions.

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.

TABLE 1  
TAX COURT OF NEW JERSEY  
CATEGORIES OF CASES FILED  
COURT YEAR 2008-2009

A. Cases filed by general category		
Local property tax cases docketed	85%	(13,563 cases)
Local property tax cases filed but not docketed <sup>2</sup>	12%	(1,991 cases)
State tax and Equalization Table cases	3%	(462 cases)
Total	100%	(16,016 cases)
B. Local property tax cases filed during the court year		
Regular cases	65%	(10,156 cases)
Small claims cases (Residential/1 - 4 family homes)	22%	(3,407 cases)
Undetermined (filed not docketed)	13%	(1,991 cases)
Total	100%	(15,554 cases)
C. State tax and Equalization Table cases filed during the court year		
State tax cases (other than Homestead Rebate & related cases)	43%	(197 cases)
Homestead rebate & related cases	56%	(257 cases)
Equalization Table cases	1%	(8 cases)
Total	100%	(462 cases)

More detailed Tax Court statistics for the 2008-2009 court year can be found in the Appendix.

<sup>2</sup> In this court year, as opposed to all prior court years, because of the huge increase in filings, we were not able to docket all complaints filed by April 1<sup>st</sup> before the end of the court year. To reflect accurately the number of cases filed we have included cases filed but not yet docketed. Information about filed but not docketed cases is not as detailed as information about cases once they are docketed.

### 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.

Our experience with DCM in Bergen and Hudson Counties was extremely positive, resulting in the Supreme Court of New Jersey's approval of the statewide implementation of the DCM pilot program in January 2005. The Tax Court continued to implement case

management and case processing policies and procedures under the Pilot Program Court Rules. The resulting improvements to the operations of the Tax Court led the Supreme Court of New Jersey to approve the permanent integration of the Pilot Program Rules into the Regular Part VIII Rules, effective September 1, 2008.

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.

It is hoped that with the significant increase in case filings, the court will be given the opportunity to implement more automated case processing, particularly e-filing. This will free the management office staff from much of its routine clerical work so that they can (a) be more helpful to litigants and (b) process more cases per management office employee (FTE). Currently, the caseload per Tax Court FTE (full time equivalent) is higher than the staffing models established for the Superior Court's Law and General Equity cases, Landlord-Tenant cases and Small Claims cases.<sup>3</sup> Additionally, unlike the management of cases in the Superior Court, the intensity of case management by the Tax Court case managers is more complex and the vast majority of Tax Court judgments are prepared and mailed by support staff in the Management Office (a copy of each judgment must be sent to four locations; two attorneys, the assessor and the tax collector. A summary of the entered judgments is also sent to the appropriate county board of taxation.).

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3. The 11-member Tax Court case management staff has on average 2,354 cases per FTE to manage and 1,456 new filings per FTE to docket. Directive # 05-09 dated June 25, 2009 indicates a Superior Court, Civil Division staffing model of one FTE for every 182 Law Division and General Equity cases, one FTE for every 1,500 landlord-tenant cases and one FTE for every 1,100 small claims cases.

The Tax Court Website continues to provide a variety of information to litigants. Several enhancements were completed this court year. The website was re-designed and all forms, litigant packets and information booklets were reviewed and updated. Additionally, the Tax Court regularly posts and updates on the Internet, reports listing the judgments entered each week and new cases docketed.

Other reports and information available on the Tax Court website include: published Tax Court opinions, all state and local property Tax Court forms, the Rules of the Tax Court (Part VIII), a small claims handbook, 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.

#### IV.

#### CASELOAD

##### A.

#### FILINGS AND DISPOSITIONS

Table 2 in the Appendix (page 1a) summarizes the thirty year history of filings and dispositions of Tax Court cases. At the beginning of the 2009 court year, the Tax Court had an inventory of 18,607 cases. Tax Court cases filed during the court year totaled 16,016 and 78 previously closed cases were reinstated. Thus, the aggregate total number of cases in inventory was 34,701. Dispositions for the court year totaled 8,808 cases, resulting in an inventory of 25,893 cases at the end of the court year.<sup>4</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 47% of the caseload pending at the beginning of the year and by issuing opinions in several notable cases (see page 17, “Standards of Assessment and Legal Principles Utilized by the Tax Court.”) The total current inventory constitutes approximately three years of dispositions at the current rate of dispositions. That is not consistent with our objective of closing standard cases within eighteen months to two years after filing. With a three-year inventory and predicted increased filings of over two years worth of cases, the court must get help in terms of increased personnel or improved methods and technology if it is not to fall hopelessly behind. At the current time, approximately 19% of the court’s caseload is in “backlog” (cases over two years old). This is in part because of the number of complex cases and the rapidly accelerating pace of filings. We find that this is an unacceptable number.

The section of this report captioned “The Court” (page 2) explains the reasons for the increasing inventory: (1) a decline in commercial and residential property values; (2) the

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

implementation of revaluations in a number of large municipalities that have not had revaluations for a very long time; (3) an increase in the number of tax appeals due to items (1) and (2); (4) a declining number of judges, relative to the number of filings, assigned to hear tax cases and (5) the inability of the Tax Court to secure sufficient information technology resources to design and implement a more modern case processing system. Two of these factors are within control of the judiciary; adding judges and modernizing/automating case processing systems. 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 increased filings per judge. That productivity can be further enhanced with the introduction of more automated case management systems. Additionally, a cadre of experienced judges needs to be developed to step into the shoes of the judges who have retired within the last few months.

B.

PRODUCTIVITY

Table 3 in the Appendix (page 1b) indicates the number of dispositions per Tax Court Judge per year for the past twelve 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 three court years (2006-2007, 2007-2008 and 2008-2009) are greater than they have been in any of the past twelve years. 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. Nevertheless, despite disposing of cases at near record rates, the six judges (three of whom have fewer than two years of service and two of those who will have been on the bench for one month and three months as of November 1<sup>st</sup>) who will be sitting in the Tax Court as of November 1st, 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 25 of the *New Jersey Tax Court Reports*. The statistics support my requests, pleas, and cries for the appointment of new judges and greater information technology support.

C.

APPEALS FROM TAX COURT DECISIONS

1. SUPREME COURT OF NEW JERSEY

During the 2008-2009 court year, the Supreme Court denied certification in five cases and granted certification and summarily remanded in three cases. The Court rendered an opinion in two Tax Court matters.

A. **Hunterdon Medical Center v. Readington**  
195 N.J. 549 (2008) - July 14, 2008

The court accepted, with minor modifications, the Tax Court's interpretation of the law regarding local property tax exemption for various subsidiary facilities of a hospital and remanded the matter for application of those standards to the facts in this case.

B. **McMahon v. City of Newark**  
195 N.J. 526 - July 17, 2008

The Supreme Court reversed the Tax Court's dismissal of the action and held that the matter should be remanded to the Superior Court because despite the Superior Court's prior transfer of the matter to the Tax Court, the parties' agreement to confer jurisdiction on the Superior Court was binding on the parties and the courts.

2. APPELLATE DIVISION OF THE SUPERIOR COURT

During the 2008-2009 court year, appeals from 33 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 thirty years. Table 5 (page 1d) shows the disposition of Tax Court cases by the Appellate Division during the 2008-2009 court year. Significant cases included:

A. **Praxair Technology, Inc. V. Director, Division of Taxation**  
404 N.J. Super. 287 (App. Div. 2009)

In administering N.J.S.A. 54:10A-2, a section of the Corporation Business Tax Act, the Director may not give retroactive application to the clarifying example in N.J.A.C. 18:7-1.9(b), i.e., to tax years antedating the promulgation in 1996 of the clarifying example dealing with the tax liability of foreign corporations that earn licensing fees from parent corporations in New Jersey.

B. **H.J. Bailey Co. v. Township of Neptune**  
399 N.J. Super. 381 (App. Div. 2008)

The Appellate Division held that even though the owner of owner-occupied property which had no history of having produced income should have responded to a Chapter 91 request, the appeal-preclusion provision did not apply to non-income-producing property.

The Court invited the Legislature to address the sanction in such circumstances through enactment of legislation.

C. **Davanne Realty v. Edison Township** 408 N.J. Super. 16  
Certif. granted, September 24, 2009

In conformity with Chapter 91 of the Laws of 1979, N.J.S.A. 54:4-34, the Tax Court dismissed plaintiff Davanne Realty's challenge to the assessed value of its commercial property. Davanne appeals from that order and contends that its tax bill is a fine, forfeiture or penalty imposed in violation of the Excessive Fines Clause of the Eighth Amendment and Article I, Paragraph 12 of the New Jersey Constitution. We conclude that the Tax Court properly rejected this claim.

**D. Lucent Technologies, Inc. V. Township of Berkeley Heights**  
405 N.J. Super. 257; 24 N.J. Tax 406 (App. Div. 2009)  
Certif. granted, October 14, 2009

The Tax Court judge interpreted Rule 8:7(e) (Rule) as not being "open-ended" as to when a municipality may file a motion to dismiss a tax appeal based upon a false or fraudulent response to a request pursuant to N.J.S.A. 54:4-34, commonly known as Chapter 91. We held that the Rule expressly excepts from the time constraints for filing tax appeal dismissal Motions, those based upon a false or fraudulent response to a Chapter 91 request. We found the Tax Court judge's interpretation of the Rule contrary to its express language and also contrary to the clear language of Chapter 91 prohibiting tax appeals where there has been a false or fraudulent response to a Chapter 91 request.

**E. Pan Chemical Corp. V. Hawthorne Borough**  
404 N.J. Super. 401 (App. Div. 2009)

The Borough reasonably relied on the legislative definitions set forth in ISRA and applied them to determine whether an environmentally contaminated property was "in use" or "shut down" for taxation valuation purposes. ISRA provides a rational, objective standard in an environmental context by which one can determine whether property "in use" or "closed down" for purposes of triggering the obligation to remediate. Nothing in the Supreme Court's opinion in Inmar, which preceded ISRA and its "ten percent standard," precludes a taxing municipality from utilizing that standard to determine whether a property is "in use" for the purpose of valuation.

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 one or more 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 24 complete volumes and recent opinions are being published in Volume 25. Only eight local property tax cases were decided by formal published opinion during this court year (most cases dealing with the value of real estate can be disposed of by less formal letter or oral bench opinions):

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, the Estate Tax, and the so called "Mansion Tax" portion of the Realty Transfer Tax. The following published opinions of state tax cases were among the most significant.

A. **Teimouraz and Nana Vassilidze v. Director, Division of Taxation**  
24 N.J. Tax 278 (Tax 2008)

The court upheld N.J.A.C. 18:35-4.1(a)7, which provides that a New Jersey resident may not claim a gross income tax credit pursuant to N.J.S.A. 54A:4-1 for taxes paid to Pennsylvania on employee compensation earned in that State. A Reciprocal Personal Income Tax Agreement between New Jersey and Pennsylvania cedes authority to collect tax on employee compensation of each others residents. Taxes paid voluntarily to a foreign jurisdiction are not "imposed" by the foreign jurisdiction within the meaning of N.J.S.A. 54A:4-1. Court held that the Director validly rejected request to abate interest on gross income tax assessment to a rate below statutory minimum.

B. **Chicago Five Portfolio, LLC v. Director, Division of Taxation**  
24 N.J. Tax 342 (Tax 2008)

An amended contract is "fully executed before July 1, 2006" within the intent and meaning of N.J.S.A. 46:15-7.4, thereby justifying a refund of the Mansion Tax, if the amendment constitutes a modification rather than a novation of the original contract. On summary judgment, the court ordered the refund of the Mansion Tax to plaintiff concluding that the parties intended to modify and not novate the contract. Reaches a different conclusion from that in Wells Reit II-

80 Park Plaza, LLC v. Director, Div. Of Taxation, 24 N.J. Tax 98 (Tax 2008), which was followed in SCI ITC So. Fund v. Director, Div. Of Taxation, 24 N.J. Tax 205 (Tax 2008).

C. **Chadwick Associates, et. al. V. Director, Div. of Taxation, et al**  
24 N.J. Tax 493 (Tax 2009)

All of the apartment properties in a municipality were not arbitrarily or invalidly selected for reassessment in violation of the Uniformity Clause of the New Jersey Constitution or of the Due Process or Equal Protection Clause of the United States Constitution, where the assessor's determination to seek approval of a compliance plan pursuant to N.J.S.A. 54:4-23, as amended by Chapter 101, was based on the enactment of a rent decontrol ordinance and its effect on market values, as evidenced by both nonusable sales and the valuation of the properties by the income approach.

D. **Estate of Frank J. Ehringer v. Director, Division of Taxation**  
24 N.J. Tax 599 (Tax 2009)

An estate must file a protective refund claim within the three-year period established by statute in order to preserve claim for refund of estate tax based on deductible expenses estate expects to incur in litigation beyond the three-year period. Fact that estate's representatives believed that during the refund claim period Division of Taxation employees were aware of ongoing beneficiary litigation, and the potential that costs associated with that litigation would lead to a future refund claim by Estate, is insufficient to establish a timely protective refund claim.

E. **Equipment Leasing & Finance Association v. Director, Division of Taxation**  
24 N.J. Tax 527 (Tax 2009)

The alternative minimum assessment credit provided under N.J.S.A. 54:10A-5(a)(f) should be aggregated with other statutory credits against corporation business tax so that the total of the credits does not exceed fifty percent of corporation business tax liability. The Director correctly interpreted the application of the alternative minimum assessment credit in her 2007 amendment to N.J.A.C. 18:7-3.17.

F. **United Parcel Service General Services Co. v. Director, Division of Taxation**  
25 N.J. Tax 1 (Tax 2009)

Appeals from assessments of corporation business tax, filed by five United Parcel Service ("UPS") subsidiary corporations. The court held as follows with respect to the issues presented:

A) The cash management system used by the UPS group of companies involved loans from the subsidiaries to the parent corporation, and the Director properly imputed interest on those loans;

B) The Director properly imputed interest on amounts constituting unpaid business services fees from the parent corporation to a subsidiary; C) The Director improperly imputed interest on amounts carried on the books of one subsidiary that, in actuality, represented liabilities of other subsidiaries; D) The Director correctly calculated the non-deductible portion of interest imputed on loans from one subsidiary to the parent corporation; E) Revenue generated by data processing services performed in New Jersey, but utilized by UPS subsidiaries in New Jersey and outside of New Jersey, was allocable to New Jersey; F) All revenue of a subsidiary having all of its property and equipment in New Jersey, and no regular place of business outside of New Jersey, was allocable to New Jersey; G) The Director properly used a weighting analysis for purposes of allocating to New Jersey revenue of subsidiaries taxed as airlines; H) Late payment penalties were improperly imposed with respect to taxes due as a result of rulings (a) and (b) above, but were properly imposed with respect to taxes due pursuant to the other rulings; I) Amnesty penalties were improperly imposed when, during the amnesty period, the plaintiffs had no knowledge of additional assessments and could not have obtained such knowledge by reasonable inquiry.

## 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 2008. Its next report will be filed in January 2010. In the 2008 report, the committee recommended to the Supreme Court that it approve amendments to several Part VIII Rules so as to make the DCM Program Rules the applicable rules to all cases and to discontinue the DCM Pilot Program. These recommendations were approved and promulgated, effective September 1, 2008. In addition to integrating the DCM Pilot Program rules as modified into the rules of Part VIII and minor technical modifications, substantive content changes were made to the following rules:

- R. 8:4-1(a)(4) - Time for Filing
- R. 8:6-8(as amended) - Local Property Tax Cases; Mandatory Settlement Conference

These modifications are more fully described in the Supreme Court Committee's report.

## VII.

### CONCLUSION

For over thirty 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. As of November 1, 2009 all of the Judges whose terms overlapped with the original judges will be retired or serving on other courts. The institution established by those judges 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 25 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. The three new judges appointed since the beginning of 2008 have by their prior experience, intelligence, and energy "all the right stuff" to continue the outstanding and nationally recognized thirty years work of their predecessors. Under the new leadership of Presiding Judge Patrick DeAlmeida, I have every reason to expect nothing less and hope for an even better court.

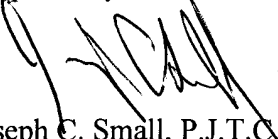
One area that is of particular interest to the taxpayers of New Jersey is this State's heavy reliance on the local property tax for the funding of government services. The need for

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.” Sadly, this precise phrase has appeared in several of my prior annual reports. Despite the promise of legislative action or a constitutional convention, the other branches of government have continued to fail to address the issues of tax reform and the fiscal crises of the State have become, during my tenure as Presiding Judge, worse and accordingly more difficult to resolve. Unless our elected officials continue to shortchange the voters by failing to address this most significant issue, 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 are well prepared to help resolve disputes as they arise on a case-by-case basis and to build on over thirty 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).

As Presiding Judge, it has been my responsibility to see to both a smooth processing of cases by our court’s judges and an orderly plan of succession by newly appointed judges. In this report I have asked that greater resources of the Information Technology Division of the Administrative Office of the Courts be devoted to the Tax Court so that the court can reduce its backlog by modernizing and increasingly automating its case processing system. I also ask that the three qualified new judges who have been nominated by the Governor and approved by the State Senate in the past two years be joined as quickly as possible by the filling of the November 1<sup>st</sup> vacancy. As I wrote two years ago, “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)." They have answered that call five times since I became Presiding Judge, with the appointment of Judge Bianco in 2001, Judge Menyuk in 2002, Judge DeAlmeida in 2008 and Judges Narayanan and Andresini in 2009. Continued vigilance by the tax bar will see that equally qualified tax practitioners are appointed now and in the years ahead.

Respectfully submitted,



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

October 2009

## **APPENDIX**

TABLE 2

**Thirty 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
6/30/08	15,596	11,760	8,749	18,607
6/30/09	18,607	***16,094	8,808	***25,893

\* 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.

\*\*\* Number includes 78 matters that were reinstated. The actual number of new cases filed was 16,016 - See footnote 2- Table 1, page 7

TABLE 3

**TAX COURT OF NEW JERSEY PRODUCTIVITY  
DISPOSITIONS PER JUDGE 1997-2009**

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)	1,156
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	1,174
6/30/99	9,367	6,356	7,005	8,718	6	1,168
6/30/00	* 9,069	5,386	6,702	7,753	6	1,117
6/30/01	7,753	4,815	4,515	8,053	4 - Axelrad appointed to Appellate Division 6/2000; Andrew retired 10/2000	1,129
6/30/02	8,053	5,952	5,932	8,073	5 - Bianco appointed 8/2001	1,186
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	1,256
6/30/07	13,120	10,759	8,283	15,596	6	1,381
6/30/08	15,596	11,760	8,749	18,607	6.5 - DeAmeida appointed 1/2008	1,346
6/30/09	18,607	**16,094	8,808	**25,893	7 - Kuskin retired 6/2009	1,258

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

\*\* See footnote 2, page 7

TABLE 4

**TAX COURT CASES APPEALED TO THE APPELLATE DIVISION**  
**1979-2009**

Court Year	Number of Cases
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
2007-2008	46
2008-2009	33

**TABLE 5**

**ACTIONS TAKEN BY APPELLATE DIVISION ON TAX COURT CASES**  
**COURT YEAR 2008-2009**

Action	Number of Cases
Affirmed	23
Dismissed	13
Reversed & Remanded	3
Motion for leave to appeal denied	1
Motion for leave to appeal granted	3
Remanded	1
Reversed	1
Withdrawn	2
Total Dispositions	47

TABLE 6

**TAX COURT CASES PENDING, FILED AND DISPOSED**  
**COURT YEAR 2008-2009**

	Local Property Tax	State Tax	Equalization & related cases	Totals
Cases pending as of first day of period	17,939	668	0	18,607
New cases filed during period	15,554	454	8	16,016
Reinstated	72	6	0	78
Subtotal	33,565	1,128	8	32,710
Cases disposed	(8,298)	(502)	8	(8,808)
Pending	25,267	626	0	25,893

TABLE 7

**CHARACTER OF COMPLAINTS DOCKETED \***  
**COURT YEAR 2008-2009**

1.	<u>Local Property Tax</u>	<u>DOCKETED</u>	<u>REINSTATED</u>
	Regular	10,156	61
	Small Claims (one to four family houses)	3,407	11
	Total	13,563	72
2.	<u>Cases Other than Local Property Tax</u>		
	<u>State Tax</u>		
	Regular	172	3
	Small Claims (mostly homestead Rebates & related cases)	290	3
	Total	462	6
		**14,025	78
	<u>Type of Tax</u>		
	Corporation Business	47	
	Cigarette	10	
	Corporation Income	1	
	Estate Tax	5	
	Fair Tenant	24	
	Gross Income	34	
	Gross Receipts	1	
	Homestead Rebate (all types)	181	
	Inheritance Tax	6	
	Litter Tax	2	
	Mansion Tax	3	
	Miscellaneous	6	
	NJ Saver	5	
	Property Tax Reimbursement	73	
	Partnership Withholding	1	
	Order to Reval	1	
	Realty Transfer Fee	4	
	Sales and Use	40	
	School Aid	8	
	Unemployment Tax/Temp Disability	1	
	10-day Deficiencies	15	
	Grand Total	468	

\* See footnote \*\* on next page (1g)

\*\*Note: although 16,016 cases were filed only 14,025 were docketed. See footnote 2, page 7

TABLE 8

**LOCAL PROPERTY TAX COMPLAINTS DOCKETED BY COUNTY**  
**2001-2009**

	6/30/01	6/30/02	6/30/03	6/30/04	6/30/05	6/30/06	6/30/07	6/30/08	6/30/09
Atlantic	63	99	59	90	53	78	148	128	256
Bergen	871	986	946	1,222	1,475	1,553	2,080	2,369	2,761
Burlington	55	54	52	69	97	120	115	160	248
Camden	62	68	80	75	69	96	137	120	158
Cape May	33	12	30	32	48	56	116	176	110
Cumberland	18	12	13	6	16	18	22	32	52
Essex	927	1,059	*1,433	*2,357	1,471	1,617	2,226	2,523	2,743
Gloucester	37	48	52	53	57	59	70	88	111
Hudson	458	381	645	457	412	439	424	522	773
Hunterdon	43	48	76	53	34	54	71	48	68
Mercer	63	78	79	103	91	153	222	180	206
Middlesex	204	248	339	464	536	752	896	901	966
Monmouth	179	265	292	375	488	487	537	848	1,019
Morris	411	486	690	563	560	583	574	581	797
Ocean	98	391	97	131	180	268	718	555	722
Passaic	494	592	298	486	446	480	757	989	1,456
Salem	10	6	7	15	13	10	24	28	34
Somerset	147	296	269	164	212	271	229	221	316
Sussex	19	79	77	44	31	39	74	111	78
Union	296	346	338	456	519	526	586	573	711
Warren	58	43	48	49	44	55	41	48	50
TOTALS*	4,546	5,597	5,920	7,264	6,852	7,714	10,067	11,201	**13,635

\* Large increase due to Newark revaluation

\*\* This number is less than the total number of "filed" cases because as explained in footnote 2 to Table 1 at page 7, not all "filed" cases were docketed before the end of the court year.