

# **TAX COURT OF NEW JERSEY**



## **ANNUAL REPORT OF THE PRESIDING JUDGE OF THE TAX COURT OF NEW JERSEY JULY 1, 2016 - JUNE 30, 2017**

The Tax Court of New Jersey  
R.J. Hughes Justice Complex  
P.O. Box 972  
25 Market Street  
Trenton, New Jersey 08625-0972

Web page: [www.njcourts.gov/courts/tax.html?lang=eng](http://www.njcourts.gov/courts/tax.html?lang=eng)

## TABLE OF CONTENTS

|      |                                                                             |    |
|------|-----------------------------------------------------------------------------|----|
| I.   | Introduction                                                                | 3  |
| II.  | The Court                                                                   | 4  |
|      | Table 1 - Categories of Cases Filed Court Year 2016-2017                    | 6  |
| III. | The Tax Court Management Office                                             | 7  |
| IV.  | Caseload                                                                    | 8  |
|      | A. Filings and Dispositions                                                 | 8  |
|      | B. Productivity                                                             | 9  |
|      | C. Decisions                                                                | 10 |
|      | 1. Supreme Court of the United States                                       | 10 |
|      | 2. Supreme Court of New Jersey                                              | 10 |
|      | 3. Superior Court, Appellate Division                                       | 10 |
|      | 4. Tax Court                                                                | 11 |
|      | (1) Local Property Tax Cases                                                | 11 |
|      | (2) State Tax Cases                                                         | 13 |
| V.   | Supreme Court Committee on the Tax Court                                    | 17 |
|      | <u>Appendix</u>                                                             |    |
|      | Thirty-Year History of Tax Court Filings and Dispositions                   | a  |
|      | Tax Court of New Jersey Productivity, Dispositions per Judge 2001-2017      | b  |
|      | Tax Court Cases Appealed to the Appellate Division 1987-2017                | c  |
|      | Actions Taken by Appellate Division on Tax Court Cases Court Year 2016-2017 | d  |
|      | Tax Court Cases Pending, Filed & Disposed, Court Year 2016-2017             | e  |
|      | Character of Complaints Filed, Court Year 2016-2017                         | f  |
|      | Local Property Tax Complaints Filed by County 2009-2017                     | g  |

## I.

### INTRODUCTION

During the 2016-2017 court year, the Tax Court experienced a continued decline in the number of new filings, attributable in large part to a reduction in local property tax appeals. This trend, which began during the 2013-2014 court year, likely reflects an improvement and stabilization in numerous aspects of the real estate market in New Jersey. Also during the court year, the Tax Court implemented the final phase of eCourts Tax, the judiciary's electronic case initiation and document filing system for the Tax Court. Use of eCourts Tax by attorneys is now mandatory for all case types in the Tax Court, fulfilling the goal of full implementation of electronic filing outlined in the June 15, 2009 "Report of the Supreme Court Special Committee on Electronic Filing" (specifically A2 – Mandatory Use). In addition to case initiation, eCourts Tax is used for all filings in existing cases, including those initiated prior to implementation of eCourts Tax. Judges, chambers staff, and the Tax Court Management Office continue to use eCourts Tax to increase efficiencies in the processing and disposition of cases. These developments assisted the court in reducing its year-end inventory of pending cases for the third court year in a row, reducing the total number of pending cases to below 35,000 for the first time since the 2009-2010 court year.

As of June 30, 2017, the court docketed 13,260 new cases, the lowest number of new filings since the 2007-2008 court year. For the fourth court year in a row, new filings have decreased as compared to the prior court year. The reduction in new filings provided the court an opportunity to focus on resolution of the pending inventory of cases accumulated during a precedent setting increase in filings over an extended number of court years. At the start of the 2016-2017 court year, the court's inventory of cases was 39,224. That number was reduced to an inventory of 34,917 by the close of the court year. This reduction was accomplished through the disposition of 17,567 cases. The 2016-2017 court year was the third court year in a row in which the court closed more cases than were docketed. This three-year period of dispositions

exceeding new filings follows a 14-year trend in which filings exceeded dispositions each court year, in some instances by large amounts.

## II.

### THE COURT

The Tax Court was established on July 1, 1979 as a trial court with statewide jurisdiction to review State and local property tax assessments. Over the past thirty-eight years, the court has disposed of hundreds of thousands of cases. The court's published opinions fill 30 volumes of the New Jersey Tax Court Reports. The court's unpublished opinions are available on the judiciary's website for a period of two weeks, after which they are collected by Rutgers Law School for inclusion in its free online library. The development of a body of legal precedent benefits the State and its taxpayers by facilitating the implementation of tax policy, as decided by our Legislature and Governor, and providing a reliable structure in which to resolve tax conflicts. In addition to deciding tax disputes, Tax Court Judges hear Superior Court cases in which the Judges' expertise in taxation is desirable. Tax Court Judges have helped resolve complex issues relating to taxation and asset valuation in business, matrimonial, foreclosure, condemnation, and other cases.

On January 19, 2017, the Hon. Michael J. Gilmore, J.T.C., took his oath of office, filling the only vacancy on the court at that time. Judge Gilmore filled the seat of the Hon. Joseph L. Foster, J.T.C, who retired during the 2015-2016 court year after more than seventeen years on the bench. Judge Foster served his entire tenure temporarily assigned to the Superior Court.

Including Judge Gilmore, during the 2016-2017 court year ten Judges were assigned to the Tax Court: Presiding Judge Patrick DeAlmeida, Judge Vito L. Bianco, Judge Mala Sundar, Judge Joseph M. Andresini, Judge Christine M. Nugent, Judge Mary Siobhan Brennan, Judge Kathi F. Fiamingo, Judge Joshua D. Novin, Judge Mark Cimino, and Judge Michael J. Gilmore. The Judges maintained chambers and heard cases in Hackensack (Judge Andresini), Newark (Judge Nugent, Judge Fiamingo, and Judge Gilmore), Morristown (Judge Bianco, and

Judge Novin), Trenton (Presiding Judge DeAlmeida, Judge Sundar, and Judge Brennan), and Atlantic City (Judge Cimino). Each Judge is designated to hear local property tax cases from specific geographic areas. These cases are assigned according to the location of the real property at issue. The Presiding Judge assigns State taxes cases.

During the court year, Judge Cimino was assigned to both the Tax Court and the Superior Court, Chancery Division, in the Atlantic/Cape May Vicinage. He devoted approximately 40% of this time to Tax Court matters.

In addition to the ten Judges assigned to the Tax Court, during the 2016-2017 court year, one Tax Court Judge was assigned to the Superior Court, Appellate Division, and one Tax Court Judge was assigned full time to the Superior Court trial division. During the court year, the Hon. Angelo J. DiCamillo, J.T.C., one of the Tax Court Judges assigned to the Superior Court, retired. Judge DiCamillo served more than twenty-three years on the bench. At the close of the 2016-2017 court year, the Hon. Jonathan A. Orsen, J.T.C., had been confirmed by the State Senate to replace Judge DiCamillo. Governor Christie's appointment of Judge Orsen to the seat, however, was not effective until after the conclusion of the 2016-2017 court year.<sup>1</sup>

---

<sup>1</sup> At the end of the 2016-2017 court year, the Hon. Francine I. Axelrad, who retired from the Tax Court, was serving on recall on the Superior Court, Chancery Division, Family Part, Camden Vicinage.

Table 1 categorizes filings and dispositions for the 2016-2017 court year. The analysis represents Tax Court cases only and does not include Superior Court cases or miscellaneous tax applications handled by Tax Court Judges. An examination of the table shows that the vast majority of the court's cases, 98%, involve local property tax. The remaining 2% of cases concern assessments by the Director, Division of Taxation, of State taxes, such as gross income tax, corporation business tax, sales and use tax, transfer inheritance tax, as well as other taxes, homestead rebate cases, and challenges to equalization tables and school aid ratios. Although small in number, these cases tend to be complicated and often involve complex legal questions that require significant judicial resources.

**TABLE 1**  
**TAX COURT OF NEW JERSEY**  
**CATEGORIES OF CASES FILED**  
**COURT YEAR 2016-2017**

|                                                                              |      |        |
|------------------------------------------------------------------------------|------|--------|
| <b>A. Cases filed by general category</b>                                    |      |        |
| Local property tax cases                                                     | 98%  | 12,875 |
| State tax and Equalization Table cases                                       | 2%   | 227    |
| Total                                                                        | 100% | 13,102 |
| <b>B. Local property tax cases filed during the court year</b>               |      |        |
| Regular cases                                                                | 60%  | 7,687  |
| Small claims cases                                                           | 40%  | 5,188  |
| Total                                                                        | 100% | 12,875 |
| <b>C. State tax and Equalization Table cases filed during the court year</b> |      |        |
| State tax cases (other than Homestead Rebate & related cases)                | 91%  | 206    |
| Homestead rebate & related cases                                             | 7%   | 16     |
| Equalization Table cases                                                     | 2%   | 5      |
| Total                                                                        | 100% | 227    |

An additional 158 previously closed cases were reinstated during the court year, bringing the total number of new cases to 13,260. More detailed Tax Court statistics for the 2016-2017 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 the case management functions necessary to move cases to disposition, but also it manages the resources needed to support the Tax Court Judges and support staff in seven locations. Specifically, the Tax Court Management Office accepts papers for filing, assigns local property tax cases, prepares calendars and judgments, responds to attorney and litigant inquiries, and provides procedural guidance.

During the court year, the Management Office worked closely with the Judiciary's business analysts and IT unit to oversee the implementation of eCourts Tax. Two case management teams continued to be responsible for docketing, screening, data processing, calendaring, records management and administrative services. The expansion of electronic filing required significant revisions to the policies and procedures currently in place. A priority for the management office continues to be reviewing the court's operations and implementing changes to accommodate electronic filing. These changes result in improved efficiency in operations, including a reduction of data entry by staff, increased efficiency in issuing judgments, and a reduction in costs.

To assist users with navigating eCourts Tax, the Tax Court website includes links to instructions and information regarding the electronic filing program. Additionally, various reports and information are available to provide timely and efficient service to litigants and the public. For example, the court provides reports on the judgments entered each month and new cases docketed. Other information available on the court's website includes: published and unpublished Tax Court opinions, notices regarding important changes to Tax Court policies,

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 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 a) summarizes the history of filings and dispositions of Tax Court cases since court year 1987-1988. At the beginning of the 2016-2017 court year, the Tax Court had an inventory of 39,224 cases. Tax Court cases docketed during the court year totaled 13,102 and an additional 158 previously closed cases were reinstated. Thus, the aggregate total number of cases in inventory was 52,484. Dispositions for the court year totaled 17,567 cases, resulting in an inventory of 34,917 cases at the end of the court year. These figures do not include miscellaneous tax applications and Superior Court cases assigned to Tax Court Judges. As noted above, the Tax Court Judges cleared the court's calendar for the third straight year. The court reduced the existing inventory of cases approximately 11% during the court year. The inventory of cases at the close of the court year constitutes approximately two years of dispositions at the current rate of disposition. That is consistent with our objective of closing standard track cases within eighteen months to two years after filing. As of the last day of the 2016-2017 court year, approximately 42% of the court's caseload was in "backlog" (cases over two years old). We find that this is a high number, but one that can reasonably be expected given the dramatic increase in case filings in the court years 2006-2007 through 2012-2013. Although we experienced significant declines in case filings since the 2013-2014 court year, our docket continues to have many unresolved older cases filed during recent peak filing years. The Tax Court Judges are increasing their efforts to resolve the older cases.

B.

PRODUCTIVITY

Table 3 in the Appendix (page b) indicates the number of dispositions per Tax Court Judge per year for the past seventeen years. Dispositions per judge in the past eight court years (2009-2010 through 2016-2017) have been significant. The 2015-2016 and 2016-2017 court years saw slight drops in the per-Judge disposition rate. The decreases reflect the shrinking inventory of pending cases and the increasing number of Judges assigned to the Tax Court. In addition, there is a limited number of real estate appraisers available to serve as experts in matters pending in the Tax Court.

It should be noted that dispositions per Judge per year is not the sole measure of the quantity and quality of the court's work. The court has developed a significant body of law through published opinions reported in Volumes 1 through 30 of the New Jersey Tax Court Reports. The published opinions reflect a fraction of the written and oral opinions issued by Tax Court Judges during the 2016-2017 court year. A description of the most significant Tax Court opinions, as well as significant published opinions of appellate courts, follows.

C.

DECISIONS

1. SUPREME COURT OF THE UNITED STATES

During the 2016-2017 court year, no petition for certiorari was filed with the Supreme Court of the United States in a case that originated in the Tax Court.

2. SUPREME COURT OF NEW JERSEY

At the start of the 2016-2017 court year, one appeal originating in the Tax Court was pending in the Supreme Court of New Jersey. During the court year, the pending appeal was dismissed, one motion for leave to appeal to the Supreme Court from a matter originating in the Tax Court was denied, and one petition for certification from a matter originating in the Tax Court was filed. As of June 30, 2017, the petition for certification was pending. The Supreme Court issued no opinions in matters that originated in the Tax Court during the 2016-2017 court year.

3. SUPERIOR COURT, APPELLATE DIVISION

During the 2016-2017 court year, appeals from thirty-nine Tax Court decisions were filed with the Superior Court, Appellate Division. Table 4 (page c) provides the number of Tax Court cases appealed to the Appellate Division over the past thirty years. Table 5 (page d) shows the disposition of Tax Court cases by the Appellate Division during the 2016-2017 court year. Appellate Division opinions in appeals from Tax Court matters are published in either the New Jersey Superior Court Reports or the New Jersey Tax Court Reports. Significant opinions issued by the Superior Court, Appellate Division during the 2016-2017 court year in cases that originated in the Tax Court included:

- A. **Rucksapol Iiwungkul v. Director, Division of Taxation**  
450 N.J. Super. 257 (App. Div.), certif. denied, \_\_\_ N.J. \_\_\_ (2017)

The Tax Court correctly held that the Domestic Partnership Act does not require that plaintiff, the surviving same-sex domestic partner of decedent, be treated as a surviving spouse for purposes of the Estate Tax. The plain language of the Act does not provide for such treatment, which is, in effect, an exemption from the tax. Plaintiff's equal protection rights are protected by the availability of same-sex marriage and same-sex civil unions, both of which treat surviving same-sex partners as spouses for purposes of the Estate Tax. Plaintiff elected not to enter into a civil union and because decedent died unexpectedly a few days before his planned marriage to plaintiff, decedent and plaintiff were not spouses at the time of decedent's death for purposes of the Estate Tax.

- B. **Peter DeRosa v. State of New Jersey, Department of Treasury**  
29 N.J. Tax 482 (App. Div. 2016)

The Tax Court correctly held that the Division of Taxation was required to calculate Inheritance Tax under the terms of decedent's will, and not pursuant to a settlement agreement between private parties. In addition, the Tax Court correctly held that the taxpayer was not entitled to a reduction in interest and penalties under the State's tax amnesty program.

#### 4. TAX COURT

Published Tax Court opinions are reported in the New Jersey Tax Court Reports. As of the date of this report, there are twenty-nine complete volumes of the New Jersey Tax Court Reports and a thirtieth volume that is partially complete.

##### (1) LOCAL PROPERTY TAX CASES

The following published opinions of the Tax Court concerning local property taxes were among the most significant of the 2016-2017 court year:

A. **Acocella v. Township of Cedar Grove**  
29 N.J. Tax 325 (Tax 2016)

The landlocked nature of the subject property must be taken into account when determining its true market value for local property tax purposes. The taxpayer's ownership of an adjacent, improved parcel does not justify an assumption of an implied easement by necessity, which would permit the subject property to be developed. Instead, the highest and best use of the property for the purpose of determining true market value is in its present condition as vacant land with impaired development potential.

B. **Merrill Creek Reservoir v. Township of Harmony**  
29 N.J. Tax 487 (Tax 2016), appeal pending

Local property tax assessments of a water storage reservoir affirmed for each tax year under review. Under the cost approach to value, entrepreneurial incentive should not be included when it is clear that profit was not the primary motivation for developing the subject property. Furthermore, a deduction for functional obsolescence is not improper merely because the reservoir is a regulated entity and its owners are required by authorities to maintain excess capacity.

C. **1959 Highway 34, LLC v. Township of Wall**  
29 N.J. Tax 506 (Tax 2016), leave to appeal denied

The deadline for filing an appeal directly to the Tax Court challenging an assessment set by a taxing district in a county participating in the Assessment Demonstration Program is established in N.J.S.A. 54:3-21(a)(2) as April 1<sup>st</sup>, or 45 days from the date of bulk mailing of notices of assessment, whichever is later. In taxing districts where there has been a districtwide revaluation or reassessment the filing deadline for direct appeals to the Tax Court is not May 1<sup>st</sup>, as is the case in appeals from assessments in counties not participating in the Assessment Demonstration Program, where the filing deadline is established by N.J.S.A. 54:3-21(a)(1). In this instance, the notice of assessment failed to provide sufficient and accurate notice of the filing deadline.

D. **Township of Galloway v. Duncan**  
29 N.J. Tax 520 (Tax 2016), appeal pending

Defendant, a disabled veteran, meets the legislatively mandated "direct support" requirement that would entitle her to a real property tax exemption for her residence. Plaintiff, a neurologist, served at Andrews Air Force Base during Operation Enduring Freedom from 2006 through 2010. Her service included treating gravely injured service members. The purpose of the statute is to compensate veterans for the experiences of war. Plaintiff, through her service, experienced war and satisfied the "direct support" requirement even though she was not collocated on the battlefield.

E. **Ritchie & Page Distribution Co. v. City of Trenton**  
29 N.J. Tax 538 (Tax 2016)

Relief under the Freeze Act, N.J.S.A. 54:51A-8 is not precluded merely by change in ownership or use of the subject property in the year following the base year. To preclude such relief, the taxing district must make a preliminary showing of substantial change in market value from the base year to the assessment dates in the years for which relief is sought. In addition, a prior owner's failure to respond to the tax assessor's request for income and expense information pursuant to N.J.S.A. 54:4-34 does not foreclose application of the Freeze Act.

F. **VBV Realty, LLC v. Township of Scotch Plains**  
29 N.J. Tax 548 (Tax 2017)

When an expert witness has failed to verify the integrity and accuracy of the market data that forms the basis of the expert's opinions, the opinions and conclusions are entitled to little weight. Person offered as a witness in a local property tax appeal shall be competent to testify about comparable sales from information or knowledge obtained from the owner, seller, purchaser, lessee or occupant, or the broker or brokers, or attorney or attorneys who negotiated or who are familiar with such transactions. Although public websites and real estate marketing and listing service websites can be a valuable tool in the appraisal community for identifying prospective comparable properties, data that has not been verified, confirmed, or corroborated with individuals possessing firsthand knowledge of market transactions is of little probative value. In addition, adjustments made to comparable sale or lease transactions must have a foundation derived from the marketplace or analysis of objective data, and not based solely upon subjective observations and personal experience.

(2) **STATE TAX CASES**

The following published opinions of the Tax Court concerning State taxes were among the most significant of the 2016-2017 court year:

A. **Harrington v. Director, Division of Taxation**  
29 N.J. Tax 370 (Tax 2016)

The Director, Division of Taxation's interpretation of June 29, 2009 amendment to N.J.S.A. 54A:6-11, extending New Jersey gross income tax to New Jersey lottery winnings received on or after January 1, 2009, is entitled to deference. However, application of the amendment to New Jersey lottery winnings from a New Jersey lottery prize awarded prior to June 29, 2009 violates the square corners doctrine.

**B. Milligan v. Director, Division of Taxation**

29 N.J. Tax 381 (Tax 2016)

The Director, Division of Taxation's interpretation of June 29, 2009 amendment to N.J.S.A. 54A:6-11, extending New Jersey gross income tax to installments of New Jersey lottery winnings received on or after January 1, 2009 from a lottery prize awarded prior to January 1, 2009, is entitled to deference. However, application of the amendment to plaintiffs violates the square corners doctrine.

**C. Leger v. Director, Division of Taxation**

29 N.J. Tax 354 (Tax 2016)

Application of amendment to N.J.S.A. 54A:6-11, extending New Jersey gross income tax to New Jersey lottery winnings received on or after January 1, 2009, to plaintiffs would be manifestly unjust, given plaintiffs' justifiable reliance on the law to their detriment prior to its amendment.

**D. Estate of Smith v. Director, Division of Taxation**

29 N.J. Tax 408 (Tax 2016)

While the Legislature enacted tax exemption statutes for New Jersey's defined benefit pension programs, it did not intend to provide tax-exempt status to the State's Alternate Benefit Program pension proceeds. The denial of tax-exempt status does not violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, or the "unalienable rights" provision of the New Jersey Constitution of 1947 because there is a rational basis for distinguishing between defined benefit pension plans and defined contribution pension plans based upon vesting differences and differences in distribution of employer contributions.

**E. Bank of America Consumer Card Holdings v. Director, Division of Taxation**

29 N.J. Tax 427 (Tax 2016), appeal pending

Interest earned by issuers of credit cards from New Jersey credit card accounts is fully allocable to New Jersey under the Corporation Business Tax Act. In addition, interchange income generated from transactions of New Jersey credit card accounts constitutes Original Issue Discount, or interest, and is also fully allocable to New Jersey. As to fees, the court allocated the fees from credit card accounts in accordance with the Director's regulation, which allocates fifty percent to the location of the account holder.

**F. HD Supply Waterworks Group, Inc. v. Director, Division of Taxation**  
29 N.J. Tax 573 (Tax 2017)

When evaluating whether good cause exists to preclude the deposition of a high-level or senior corporate executive of a publicly traded corporation – an “apex deposition” – the court must consider whether the deponent possesses some unique, first-hand, non-repetitive knowledge of the facts at issue, and whether the proponent of the deposition has exhausted other less intrusive discovery methods. Although no per se rule exists barring depositions of senior corporate executives, the court observed that when the deponent has certified that he or she has no personal knowledge of the material facts at issue, a protective order is appropriate. Under such circumstances, the principles espoused under R. 4:10-2(a) and R. 4:14-1 are not upended by requiring the deposing party to first seek discovery through other less intrusive means, and from lower level employees who likely have direct knowledge.

**G. General Foods Credit Investors #3 Corp. v. Director, Division of Taxation**  
29 N.J. Tax 590 (Tax 2017)

The court held that plaintiff did not obtain sufficient benefits and burdens of ownership of assets subject to a sale-leaseback transaction between plaintiff and New Jersey Transit for those assets to be treated as plaintiff’s property for purposes of the property allocation fractions used to calculate plaintiff’s Corporation Business Tax liability. See N.J.S.A. 54:10A-6(A). Plaintiff purchased the assets from New Jersey Transit solely to make use of their federal tax benefits and transferred back to New Jersey Transit through a sublease all other significant benefits and burdens of ownership. In light of this conclusion, the court held that imputed rental income from those assets should not be included in plaintiff’s receipts allocation fractions. See N.J.S.A. 54:10A-6.

**H. Estate of Van Riper v. Director, Division of Taxation**  
30 N.J. Tax 1 (Tax 2017), appeal pending

Seven years prior to death, decedent and spouse transferred the marital home to an irrevocable trust. Per the terms of the trust, the transferors could reside in the property until death. At death, the property would be transferred to a niece. The estate asserts the transfer to the niece is not subject to taxation per N.J.S.A. 54:34-1.1 since the transfer to trust occurred more than three years prior to death. The court held that the transfer is indeed subject to taxation as an “at or after death” transfer since the transferors did not completely dispose of all rights or powers over the marital home until death. By holding the string of being able to reside in the property until death, the transferors retained for themselves and did indeed exercise the right and power to enjoy the property. Accordingly, the “at or after death” exemption set forth in N.J.S.A. 54:34-1.1 does not apply.

**I. Manheim NJ Investments, Inc. v. Director, Division of Taxation**  
30 N.J. Tax 18 (Tax 2017)

N.J.A.C. 18:7-1.15(b)(9) declared *ultra vires* and void. The Director, Division of Taxation, exceeded his authority under N.J.S.A. 54:10A-27 to prescribe and issue regulations consistent with the Corporations Business Tax Act when he amended N.J.A.C. 18:7-1.15 to exclude companies that invest in certain flow-through entities from investment company treatment. The Director does not have authority to narrow an already comprehensive definition of “investment company” set forth by the Legislature in N.J.S.A. 54:10A-4(f) and excluding companies that invest certain flow-through entities contravenes the generally accepted definition of “securities” as used in N.J.S.A. 54:10A-4(f) and defined by New Jersey courts.

**J. Xylem Dewatering Solutions, Inc. v. Director, Division of Taxation**  
30 N.J. Tax 41 (Tax 2017), appeal pending

Plaintiffs challenged the defendant’s imposition of tax pursuant to N.J.S.A. 54:10A-5.23(d) for the Trustee of the Grantor Trust’s failure to timely file S Corporation shareholder consent to tax required by N.J.S.A. 54:10A-5.22; the calculation of New Jersey source income on the I.R.C. §338(h)(10) deemed sale of assets of the S Corporation; and the imposition of the underpayment penalty. The retroactive election filed by the Trustee of the Grantor Trust shareholders cured the failure to file such consents in a timely manner. In addition, notwithstanding its characterization, the income is taxable to the non-resident shareholders on the deemed sale of assets of a New Jersey S corporation pursuant to I.R.C. §338(h)(10) as net gain from the disposition of property for New Jersey Gross Income Tax purposes. Income on the deemed sale of assets was “non-operational” income allocable to New Jersey as the domiciliary state and New Jersey source income for Gross Income Tax purposes. The penalties on the underpayment were abated due to the lack of certainty in the regulations and lack of judicial guidance.

**K. BMC Software, Inc. v. Director, Division of Taxation**  
30 N.J. Tax 92 (Tax 2017)

Defendant correctly deemed payments made by subsidiary to parent under a Parent-Subsidiary License Agreement, which required subsidiary to pay 55% of gross proceeds from sale of parent’s pre-written software and maintenance contracts as royalty for use of parent’s proprietary software products, as intangible expenses/costs for purposes of the addback provisions of N.J.S.A. 54:10A-4.4. However, a deduction for the same is allowable because plaintiff credibly showed that such payments were substantively equivalent to similar unrelated third party transactions involving the same subject and object (sale of license contracts and service contracts). Thus, denying a deduction for such payments is unreasonable.

V.

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 local, county, and State tax administrators, and others concerned with the administration of New Jersey tax laws. The committee fulfills a vital role in its advisory capacity by developing and recommending rule changes affecting the operation of the court. The committee meets regularly and will next issue a report in January 2018.

Respectfully submitted,

/s/Hon. Patrick DeAlmeida, P.J.T.C.

October 26, 2017

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 |
|------------|-----------------------------|---------|--------------|----------------------------|
| 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                      |
| 6/30/02    | 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                      | 14,103  | 8,808        | 23,902                     |
| 6/30/10    | 23,902                      | 18,426  | 10,938       | 31,390                     |
| 6/30/11    | 31,390                      | 19,776  | 15,467       | 35,699                     |
| 6/30/12    | 35,699                      | 15,556  | 15,457       | 35,798                     |
| 6/30/13    | 35,798                      | 25,364  | 17,168       | 43,994                     |
| 6/30/14    | 43,994                      | 18,962  | 15,747       | 47,209                     |
| 6/30/15    | 47,209                      | 16,173  | 20,720       | 42,662                     |
| 6/30/16    | 42,662                      | 14,654  | 18,092       | 39,224                     |
| 6/30/17    | 39,224                      | 13,260  | 17,567       | 34,917                     |

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

TABLE 3

TAX COURT OF NEW JERSEY PRODUCTIVITY  
DISPOSITIONS PER JUDGE 2001-2017

| Year ended | Pending first day of period | Filings | Dispositions | Pending last day of period | # of Judges (full time equivalents)                                                      | Dispositions per Judge |
|------------|-----------------------------|---------|--------------|----------------------------|------------------------------------------------------------------------------------------|------------------------|
| 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 - DeAlmeida appointed 1/2008                                                         | 1,346                  |
| 6/30/09    | 18,607                      | 14,103  | 8,808        | 23,902                     | 7 - Kuskin retired 6/2009                                                                | 1,258                  |
| 6/30/10    | 23,902                      | 18,426  | 10,938       | 31,390                     | 6 - Small, Pizzuto retired 10/2009; Sundar appointed 7/2009; Andresini appointed 10/2009 | 1,823                  |
| 6/30/11    | 31,390                      | 19,776  | 15,467       | 35,699                     | 6 - Hayser retired 10/2010; Nugent appointed 10/2010                                     | 2,578                  |
| 6/30/12    | 35,699                      | 15,556  | 15,457       | 35,798                     | 6 - Brennan appointed 6/2012                                                             | 2,576                  |
| 6/30/13    | 35,798                      | 25,364  | 17,168       | 43,994                     | 6.5 - Menyuk retired 1/2013                                                              | 2,641                  |
| 6/30/14    | 43,994                      | 18,962  | 15,747       | 47,209                     | 6 - Fiamingo appointed 4/2014                                                            | 2,625                  |
| 6/30/15    | 47,209                      | 16,173  | 20,720       | 42,662                     | 8 – Novin appointed 8/14                                                                 | **2,590                |
| 6/30/16    | 42,662                      | 14,654  | 18,092       | 39,224                     | 8.25 – Cimino appointed 7/15 (Partial Caseload)                                          | 2,193                  |
| 6/30/17    | 39,224                      | 13,260  | 17,567       | 34,917                     | 8.75 - Gilmore appointed 1/17; Cimino (Partial Tax)                                      | 2,008                  |

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

\*\* Corrected error reported in 2014-2015 annual report.

TABLE 4

## TAX COURT CASES APPEALED TO THE APPELLATE DIVISION 1987-2017

| Court Year | Number of Cases |
|------------|-----------------|
| 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              |
| 2009-2010  | 47              |
| 2010-2011  | 27              |
| 2011-2012  | 29              |
| 2012-2013  | 36              |
| 2013-2014  | 33              |
| 2014-2015  | 23              |
| 2015-2016  | 32              |
| 2016-2017  | 39              |

TABLE 5

ACTIONS TAKEN BY APPELLATE DIVISION ON TAX COURT CASES  
COURT YEAR 2016-2017

| Action                                        | Number of Cases |
|-----------------------------------------------|-----------------|
| Affirmed                                      | 7               |
| Dismissed                                     | 7               |
| Motion for leave to appeal denied             | 5               |
| Motion for leave to appeal granted and remand | 1               |
| <b>Total Dispositions</b>                     | <b>20</b>       |

TABLE 6

TAX COURT CASES PENDING, FILED AND DISPOSED  
COURT YEAR 2015-2016

|                                            | Local<br>Property<br>Tax | State Tax | Equalization<br>& related cases | Totals |
|--------------------------------------------|--------------------------|-----------|---------------------------------|--------|
| Cases pending as of first day<br>of period | 38,701                   | 523       | 0                               | 39,224 |
| New cases filed during period              | 12,875                   | 222       | 5                               | 13,102 |
| Reinstated                                 | 157                      | 1         | 0                               | 158    |
| Subtotal                                   | 51,733                   | 746       | 5                               | 52,484 |
| Cases disposed                             | 17,270                   | 292       | 5                               | 17,567 |
| Pending                                    | 34,463                   | 454       | 0                               | 34,917 |

TABLE 7

CHARACTER OF COMPLAINTS FILED  
COURT YEAR 2016-2017

|                                                 | FILED         | REINSTATED |
|-------------------------------------------------|---------------|------------|
| <b>1. Local Property Tax</b>                    |               |            |
| Regular                                         | 7,687         | 119        |
| Small Claims                                    | 5,188         | 38         |
| <b>TOTAL</b>                                    | <b>12,875</b> | <b>157</b> |
| <br>                                            |               |            |
| <b>2. Other than Local Property Tax (STATE)</b> |               |            |
| Regular                                         | 159           | 0          |
| Small Claims                                    | 68            | 1          |
| <b>TOTAL</b>                                    | <b>227</b>    | <b>1</b>   |
| <b>Grand Total</b>                              | <b>13,102</b> | <b>158</b> |

Type of State Tax

|                                    |            |          |
|------------------------------------|------------|----------|
| 10 Day Deficiency                  | 26         |          |
| Corporate S Election               | 1          |          |
| Corporation Business               | 35         |          |
| Docketed Judgment                  | 1          |          |
| Estate Tax                         | 1          |          |
| Fair Homestead Rebate              | 16         |          |
| Gross Income                       | 52         | 1        |
| Inheritance Tax                    | 10         |          |
| Insurance Premiums                 | 1          |          |
| Litter Control Tax                 | 2          |          |
| Non-Residential Dev Fee (COAH)     | 2          |          |
| Order to Implement Reval           | 1          |          |
| Partnership withholding tax        | 1          |          |
| Property Tax Reimbursement         | 21         |          |
| Realty Transfer Fee                | 1          |          |
| Responsible Person Status          | 1          |          |
| Sales and Use                      | 48         |          |
| School Aid (Table of Equalization) | 5          |          |
| Tobacco Prod Wholesale Sales & Use | 3          |          |
| <b>Total</b>                       | <b>227</b> | <b>1</b> |

TABLE 8

LOCAL PROPERTY TAX COMPLAINTS FILED BY COUNTY  
2009-2017

|               | 6/30/09       | 6/30/10       | 6/30/11       | 6/30/12       | 6/30/13       | 6/30/14       | 6/30/15       | 6/30/16       | 6/30/17       |
|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Atlantic      | 256           | 374           | 406           | 241           | 472           | 731           | 356           | 336           | 276           |
| Bergen        | 2,761         | 3,699         | 3,935         | 3,486         | 5,621         | 3,834         | 2,698         | 2390          | 2185          |
| Burlington    | 248           | 395           | 424           | 336           | 501           | 303           | 283           | 226           | 227           |
| Camden        | 158           | 214           | 218           | 255           | 481           | 213           | 154           | 136           | 114           |
| Cape May      | 110           | 123           | 104           | 102           | 117           | 65            | 88            | 86            | 81            |
| Cumberland    | 52            | 52            | 51            | 43            | 127           | 173           | 97            | 47            | 56            |
| Essex         | 2,743         | 3,109         | 3,471         | 2,985         | 4,471         | 3,493         | 3,612         | 3064          | 2621          |
| Gloucester    | 111           | 144           | 121           | 190           | 412           | 296           | 159           | 113           | 104           |
| Hudson        | 773           | 1,105         | 1,214         | 735           | 1,040         | 749           | 689           | 497           | 560           |
| Hunterdon     | 68            | 91            | 97            | 70            | 139           | 115           | 89            | 76            | 53            |
| Mercer        | 206           | 243           | 374           | 240           | 338           | 252           | 213           | 189           | 216           |
| Middlesex     | 966           | 1,248         | 1,490         | 1,058         | 1,645         | 1,250         | 1,106         | 953           | 821           |
| Monmouth      | 1,019         | 1,747         | 1,433         | 944           | 1,736         | 1,566         | 1,178         | 1354          | 1255          |
| Morris        | 797           | 1,078         | 1,228         | 766           | 1,936         | 1,251         | 1,011         | 878           | 935           |
| Ocean         | 722           | 1,015         | 876           | 479           | 996           | 659           | 610           | 501           | 527           |
| Passaic       | 1,456         | 1,546         | 1,522         | 1,443         | 2,404         | 1,641         | 1,375         | 1369          | 1265          |
| Salem         | 34            | 41            | 69            | 41            | 72            | 50            | 44            | 28            | 43            |
| Somerset      | 316           | 546           | 619           | 384           | 653           | 403           | 392           | 321           | 262           |
| Sussex        | 78            | 352           | 329           | 231           | 288           | 178           | 136           | 187           | 174           |
| Union         | 711           | 948           | 1,163         | 1,077         | 1,402         | 1,189         | 1,393         | 1380          | 999           |
| Warren        | 50            | 77            | 130           | 99            | 205           | 143           | 108           | 100           | 101           |
| <b>TOTALS</b> | <b>13,635</b> | <b>18,147</b> | <b>19,274</b> | <b>15,205</b> | <b>25,056</b> | <b>18,554</b> | <b>15,791</b> | <b>14,231</b> | <b>12,875</b> |