

CORPORATION BUSINESS TAX - PL 86-272 - COLLECTION OF  
ACCOUNTS AND PICKING UP RETURNED GOODS

Tax Court; Chester A. Asher, Inc. v. Director, New Jersey Division of Taxation; Docket No. 004061-2003; opinion by Small, P.J.T.C., decided January 5, 2006. For plaintiff - Harry D. Shapiro, of the Maryland bar, admitted pro hac vice, and Adrienne C. Rogove (Saul Ewing, attorneys); for defendant - Michael J. Duffy (Peter C. Harvey, Attorney General, attorney).

The regular collection of accounts and pick-up of returned or damaged goods by a corporation's delivery drivers is beyond the scope of solicitation of orders and voids the immunity from New Jersey Corporation Business Tax provided by the federal statute. 15 U.S.C.A. § 381, P.L. 86-272.

**LOCAL PROPERTY TAX - N.J.S.A. 54:4-23 - COMPLIANCE PLAN**

Tax Court; BASF Corporation Coating and Ink Division v. Town of Belvidere; Docket Nos. 001514-2004 and 001198-2005; opinion by Kuskin, J.T.C., decided December 19, 2005. For plaintiff - Frank E. Ferruggia (McCarter & English, attorneys); for defendant - Richard M. Conley (Conley & Sozansky, attorneys).

Under N.J.S.A. 54:4-23, as amended by L. 2001, c. 101, an assessor may change one assessment in a municipality without an approved compliance plan.

**LOCAL PROPERTY TAX - DISABLED VETERAN'S EXEMPTION AND  
VETERANS DEDUCTION - VIETNAM CONFLICT - SERVICE IN THE  
RESERVES AND NATIONAL GUARD**

Tax Court; Township of Dover v. Scuzorzo; Docket No. 000201-2005; opinion by Small, P.J.T.C., decided December 28, 2005. For plaintiff Dover Township - Scott Kenneally (Starkey, Kelly, Bauer & Kenneally, attorneys); for defendants Frank and Sharon Scuzorzo - John J. Mensching (Orlovsky, Grasso, Bolger, Mensching, Halpin & Dailey, attorneys); and Director, Division of Taxation v. Lambertville City & Buchanan, Docket No. 005494-2004. For plaintiff Director, Division of Taxation - Michael J. Spina (Peter Harvey, Attorney General of New Jersey, attorney); for defendant Winfield & Patricia Buchanan - pro se.

For the purposes of both the Disabled Veteran's Tax Exemption and the Veteran's Tax Deduction, the term "active service in time of war," contained within and N.J.S.A. 54:4-3.33a and -8.10, respectively, includes a veteran's participation in the reserves and national guard during the times specified in those statutes with respect to the Vietnam conflict. The statutes do not place restrictions on the length, location, or nature of the service with respect to service during the Vietnam conflict.

**TRANSFER INHERITANCE TAX; CONTINGENT INTEREST; LIFE ESTATE.**

Tax Court; Estate of Catherine Franko, deceased, Arnold G. Shurkin and Anita V. Cosgrove, Executors v. Director, Division of Taxation; Docket No. 004613-2005; opinion by Kuskin, J.T.C., decided March 3, 2006. For plaintiff - Arnold G. Shurkin, attorney; for defendant - Heather Lynn Anderson (Zulima V. Farber, Attorney General of New Jersey, attorney).

Under a testamentary trust created by the decedent, her husband could receive, during his lifetime, income and principal to the extent determined by the trustees in their sole discretion. The husband's interest in the trust was a contingent interest and not a life estate and, therefore, was not subject to valuation under N.J.S.A. 54:36-2. As no distributions were actually made to the husband, the estate did not benefit from the exemption from taxation for assets passing to a decedent's surviving spouse.

**LOCAL PROPERTY TAX - REVALUATION**

Tax Court; Theresa & Joseph Feldman, et al v. Borough of Ringwood, Passaic County Board of Taxation, State of New Jersey, Division of Taxation, Rose Farrell, Tax Assessor, Borough of Ringwood; Docket No. 003758-2004; opinion by Kuskin, J.T.C., decided April 13, 2006. For plaintiffs - Steven R. Irwin (Mandelbaum & Irwin, attorneys); for defendants Borough of Ringwood and Rose Farrell, Tax Assessor - Andrew M. Brewer (Maraziti, Falcon & Healey, attorneys); for defendants Division of Taxation and Passaic County Board of Taxation - Michael J. Spina (Zulima V. Farber, Attorney General of New Jersey, attorney).

Plaintiffs' proofs did not establish the need for a revaluation under the criteria set forth in N.J.A.C. 18:12A-1.14(b)(1), but did establish the need for a county board of taxation determination as to whether a revaluation should be ordered.

**SALES AND USE TAX - BULK SALE NOTICE**

Tax Court; GABGEO, Inc. v. Director, New Jersey Division of Taxation; Docket No. 007640-2004 and 007676-2004; opinion by Small, P.J.T.C., decided April 21, 2006. For plaintiff - Bunce Atkinson (Atkinson & DeBartolo, attorneys); for defendant - Mala Narayanan (Zulima V. Farber, Attorney General of New Jersey, attorney).

For bulk sales notice to be effective in insulating purchaser from its predecessor's tax liabilities it must be filed by the purchaser in accordance with the statute.

Discussions by the seller with the Director prior to the bulk sale do not constitute substantial compliance with the statute or estop the Director from asserting transferee liability against the purchaser.

**STATE TAX - SALES AND USE TAX - EXEMPTION FOR TELEVISION CABLE**

Tax Court; RCN of New Jersey, Inc. v. Director, Division of Taxation; Docket Nos. 005951-2003, 007728-2004 and 004588-2005; opinion by Kuskin, J.T.C., decided - bench opinion March 24, 2006; formal opinion May 12, 2006. For plaintiff - Sean M. Lipsky and Jeffrey H. Schechter (Cole, Schotz, Meisel, Forman & Leonard, attorneys); for defendant - Marlene G. Brown (Zulima V. Farber, Attorney General of New Jersey, attorney).

The purchase of fiber-optic cable, coaxial cable, and coaxial drop cable having a useful life of more than one year, and used directly and primarily in the transmission of television information is exempt from sales tax under N.J.S.A. 54:32B-8.13(e).

**STATE TAXES - UNTIMELY PROTEST - NEGOTIATIONS AND COMPROMISE  
AGREEMENTS - JURISDICTION OF TAX COURT**

Tax Court, Harry's Lobster House Corporation v. Director, Division of Taxation, Docket No. 004978-2004; opinion by Menyuk, J.T.C., decided June 5, 2006. For plaintiff - William F. Dowd (Dowd & Reilly, attorneys); for defendant - Heather Lynn Anderson (Zulima V. Farber, Attorney General of New Jersey, attorney).

The Director correctly declined to consider an untimely protest of assessments of corporate business tax, gross income withholding tax, litter tax, and sales and use tax and the Tax Court had no jurisdiction to consider the merits of the complaint. An informal agreement to re-audit and re-assess the tax entered into by a Division employee after the complaint had been filed, was not binding on the Director where the statutory requirements for a compromise agreement had not been fulfilled.



**LOCAL PROPERTY TAX - VALUATION - CASINO HOTEL**

Tax Court, City of Atlantic City v. Ace Gaming, LLC; Docket Nos. 000157-1997, 000158-1997, 000159-1997, 000160-1997, 000161-1997, 000162-1997, 000163-1997, 002609-1998, 002612-1998, 002604-1998, 002591-1998; Ace Gaming, LLC v. City of Atlantic City; Docket Nos. 000176-1997, 003538-1997, 003540-1997, 003541-1997, 003543-1997, 001192-1999, 003030-1999; opinion by Bianco, J.T.C., decided May 12, 2006. For Ace Gaming, LLC - Nathan P. Wolf (Wolf Block Brach Eichler, attorneys); For City of Atlantic City - Michael J. Caccavelli (DeCotiis, Fitzpatrick, Cole & Wisler, attorneys).

In valuing casino hotel, court analyzed appraisers' competing capitalized income approaches to value. The court rejected the casino's expert's use of actual income and expenses, because of a finding of bad management. The court reduced the assessments to the levels of the municipality's appraiser who had relied on "industry" income and expenses as opposed to those of the subject casino hotel

**SALES AND USE TAX - PRESUMPTION OF CORRECTNESS OF ASSESSMENT -  
REASONABLENESS OF AUDIT METHODOLOGY**

Tax Court, Charley O's Inc., T/A Scotty's Steakhouse v. Director, Division of Taxation, Docket No. 002836-2002; opinion by Menyuk, J.T.C., decided July 12, 2006. For plaintiff - James B. Evans (Kulzer & DiPadova, P.A., attorneys); for defendant - Mindy H. Gensler (Zulima V. Farber, Attorney General of New Jersey, attorney).

Presumption of correctness of sales tax assessment overcome where Division arbitrarily substituted gross receipts reported on corporation business tax returns for gross receipts reported on sales tax returns. The taxpayer produced evidence that was sufficiently definite, positive and certain in quality and quantity to establish the correct amount of sales tax due.

**STATE TAX - UTILITIES - APPLICABILITY OF GROSS RECEIPTS AND  
FRANCHISE TAX AND CORPORATION BUSINESS TAX**

Tax Court; Delmarva Power & Light Co. v. Director, New Jersey Division of Taxation; Docket Nos. 001433-2000 and 000343-1999; opinion by Small, P.J.T.C., decided July 14, 2006. For plaintiff - James B. Evans, Jr. (Kulzer & Dipadova, P.A., attorneys). For defendant - Marlene G. Brown, D.A.G. (Zulima V. Farber, Attorney General, attorney).

For tax years prior to 1998, an electric public utility operating in New Jersey and other states and making no retail sales in New Jersey is held to have been subject to the corporation business tax, in part, because it had no liability for the franchise and gross receipts.

**CORPORATION BUSINESS TAX - FINANCIAL BUSINESS CORPORATION**

Tax Court; Chemical New Jersey Holdings, Inc. v. Director, Division of Taxation; Docket No. 000213-2001; opinion by Kuskin, J.T.C., decided July 31, 2006. For plaintiff - Richard A. Rafanello (Shain, Schaffer & Rafanello, attorneys); for defendant - Edward D. Tan (Zulima V. Farber, Attorney General of New Jersey, attorney).

In order to qualify for taxation as a financial business corporation, as defined in N.J.S.A. 54:10A-4(f), plaintiff had to prove that the lending activity on which it relied as the basis for qualification was "in substantial competition with the business of national banks." Plaintiff failed to do so.

**LOCAL PROPERTY TAX - FARMLAND ASSESSMENT ACT - IMPOSITION OF  
ROLL-BACK TAXES - USE DISTINGUISHED FROM CHANGE IN USE**

Tax Court; Merrick Wilson v. Hopewell Township; Docket No. 007429-2005; opinion by Menyuk, J.T.C., decided July 19, 2006. For plaintiff - Merrick Wilson, pro se; for defendant - Steven P. Goodell (Herbert, Van Ness, Cayci & Goodell, attorneys).

Under N.J.S.A. 54:4-23.8, ceasing farming activities and allowing land to lie fallow without the intended purpose of improving the quality of the soil constitutes a change in use from agricultural to non-agricultural, thereby subjecting that portion of the property to roll-back taxes. When land is deemed to be "woodland" but not yet eligible for farmland assessment because the land has not been devoted to agricultural use for two successive calendar years, roll-back taxes may not be imposed on that portion of the subject property.

**LOCAL PROPERTY TAX - INCOME AND EXPENSE INFORMATION -  
CHAPTER 91 - EFFECT OF CHAPTER 101 OF THE LAWS OF 2001**

Tax Court; New Plan Realty v. Township of Brick, Docket No. 003320-2005; opinion by Small, P.J.T.C., decided August 22, 2006. For plaintiff - Bruce Stavitsky; for defendant - Diana Anderson. F. Lackland & Sons v. Township of Brick, Docket No. 003022-2005. For plaintiff - Paul I. Tannenbaum (Zipp and Tannenbaum, attorneys); for defendant - Diane Anderson.

The Tax Court held that N.J.S.A. 54:4-23 ("Chapter 101") does not require tax assessors to forward income and expense requests, pursuant to N.J.S.A. 54:4-34 ("Chapter 91"), 45 days prior to the November 1st deadline for submission of compliance plans under Chapter 101.

**LOCAL PROPERTY TAX - REALTY TRANSFER FEE - I.R.C. § 1031  
LIKE-KIND EXCHANGE - CONSIDERATION - ASSUMPTION OF MORTGAGE**

Tax Court; Michael B. Adelhock, et al. v. Clerk of Bergen County, et al.; Docket No. 000018-2002; opinion by Pizzuto, J.T.C., decided November 2, 2006. For plaintiff - James A. Caporrino (Park, Weinstein & Caporrino, LLP, attorneys); for defendant - Janet B. Greenberg (Stuart Rabner, Attorney General of New Jersey, attorney).

A conveyance of property (for a stated consideration of \$1.00) which was part of a series of conveyances structured to achieve a tax-free exchange of like-kind property under I.R.C. § 1031 was not exempt from the realty transfer fee under N.J.S.A. 46:15-10(a) as a transfer for consideration of less than \$100.00 because consideration actually consisted of the stated amount (\$1.00) together with the amount (\$425,000) of a mortgage, which had been placed upon the property in a previous transaction in the series and was assumed at the time of the subject conveyance.

**STATE TAXATION - CORPORATION BUSINESS TAX - BASIS FOR DEPRECIATION OF TRANSFERRED ASSETS**

Tax Court; Clorox Products Manufacturing Corporation v. Director, Division of Taxation, Docket No. 007867-2004; opinion by Bianco, J.T.C., decided November 29, 2006. For plaintiff - Paul H. Frankel and Mitchell A. Newmark (Morrison & Foerster LLP, attorneys); for defendant - Marlene G. Brown (Stuart Rabner, Attorney General of New Jersey, attorney).

N.J.A.C. 18:7-5.2(a)(2)(v) does not require a corporation to accelerate the depreciable state tax basis of property to the same level as the depreciable federal tax basis which would be allowed under federal accelerated depreciation rules when property is transferred to another corporation. Accordingly, a transferee corporation may depreciate the transferred property using the same basis as the transferor corporation's state tax basis. The court rejects the State's argument that, for state tax purposes, the transferee corporation may use only the transferor corporation's lower allowable federal basis when depreciating transferred property.



**LOCAL PROPERTY TAX - FARMLAND ASSESSMENT ACT - FAILURE TO FILE  
TIMELY APPLICATION FOR FARMLAND ASSESSMENT - VALUATION OF  
PROPERTY WITH DEED COVENANT RESTRICTING USE TO FARMING**

Tax Court; All Monmouth Landscaping & Design, Inc. v. Manalapan Township; Docket No. 007199-2005; opinion by Menyuk, J.T.C., decided October 20, 2006. For plaintiff - Constantine Bardis (Constantine Bardis, attorney); for defendant - Emil Philiposian (Hoagland, Longo, Moran, Dunst & Doukas, attorneys).

For real property to be valued and assessed under the Farmland Assessment Act, N.J.S.A. 54:4-23.1 to -23.23, the taxpayer must annually file a timely application by August 1 of the pretax year; failure to do so precludes valuation, assessment and taxation under the Act, regardless of the property's use as farmland or its assessment under the Act in prior years. However, a taxpayer not entitled to farmland assessment is still entitled to have his property valued by the assessor at its fair market value, N.J.S.A. 54:4-23, and valuation may include consideration of a restrictive covenant in the taxpayer's deed.

**LOCAL PROPERTY TAXATION - FREEZE ACT PROTECTION - ZONING CHANGE**

Tax Court; Millburn Township v. Short Hills Associates/Taubman Co.; Docket No. 004430-2006; opinion by Bianco, J.T.C., decided February 6, 2007. For plaintiff - John R. Lloyd (Nowell, Amorosa, Klein, Bierman, P.C., attorneys); for defendant - John E. Garippa (Garippa, Lotz & Giannuario, P.C., attorneys).

The protections afforded to taxpayers under the Freeze Act (N.J.S.A. 54:51A-8) do not apply when a *zoning change* has been *adopted* prior to October 1st of the pre-tax year (the valuation date) even though the zoning change is not yet *effective*.

**LOCAL PROPERTY TAXATION - APPEALS TO THE TAX COURT - MOTION TO REOPEN JUDGMENT - NEWLY DISCOVERED EVIDENCE**

Tax Court; Howard Bennett and Frances Bennett v. Maple Shade Township; Docket No. 005552-2005; opinion by Menyuk, J.T.C.; decided December 18, 2006; published February 16, 2007. For plaintiff - Walter T. Wolf (Walter T. Wolf, attorney); for defendant - Eileen K. Fahey (Eileen K. Fahey, attorney).

When taxpayers know of a soil condition affecting their property at least six months before trial and made no attempt to obtain an expert report regarding the extent of the condition and estimates of the cost to cure the defects until after the completion of the trial, the court will not reopen judgment on the basis of newly discovered evidence because the information was discoverable before trial and could have been obtained in a timely fashion with the exercise of due diligence.

**LOCAL PROPERTY TAXATION - APPEALS TO THE TAX COURT BY  
MUNICIPALITIES - PROPERTY TAX EXEMPTION - DATE OF COMMENCEMENT -  
EXEMPTION FROM PAYMENT OF TAXES**

Tax Court; City of Trenton v. Ewing Township; Docket No. 007772-2006; opinion by Menyuk, J.T.C.; decided November 17, 2006; published February 16, 2007. For plaintiff - John V. Dember (Nerwinski & Dember, attorneys); for defendant - Harry Haushalter (Harry Haushalter, attorney).

N.J.S.A. 54:4-3.3b granting tax exemptions to the State for property acquired after October 1 of the pretax year is not applicable to an entity other than the State, a State agency, or an authority of the State. Thus, when property of an entity (a municipality) not enumerated in the provision is acquired in the pretax year but after the October 1 valuation date, it will not be exempt from taxation under N.J.S.A. 54:4-3.3b and will remain taxable property until the following tax year. Nevertheless, because the law was not settled at the time this complaint was filed, and the City of Trenton failed to pay taxes as required by N.J.S.A. 54:51A-1(b) in reliance upon N.J.S.A. 54:51A-3, the complaint was not dismissed.

**SALES AND USE TAX - SALE FOR RESALE - INTERIM USE**

Tax Court; UPS Oasis Supply Corporation v. Director, Division of Taxation; Docket No. 005150-2004; opinion by Kuskin, J.T.C., decided March 9, 2007. For plaintiff - Michael James Guerriero (Day Pitney, LLP, attorneys) and Richard D. Birns of the Pennsylvania bar, admitted pro hac vice; for defendant - Marlene G. Brown (Stuart Rabner, Attorney General of New Jersey, attorney).

Plaintiff purchased computer equipment for purposes of resale but used the equipment between the date of purchase and the date of resale. Because plaintiff failed to prove that its interim use of the equipment was consistent with a resale purpose, plaintiff's purchase of the equipment did not qualify for the sale-for-resale exemption from sales and use tax under N.J.S.A. 54:32B-2(e)(1).

As a result of the failure by plaintiff and other wholly-owned subsidiaries of United Parcel Service of America, Inc. to respect their respective separate corporate identities, a payment of tax by plaintiff properly could be treated as a payment on behalf of another subsidiary.

**SALES AND USE TAX - SERVICE CONTRACTS - PARTS AND MATERIALS -  
PURCHASE BY CONTRACTOR - INTEREST - PENALTY - WAIVER OR  
ABATEMENT - DISCRETION OF DIRECTOR**

Tax Court; Tozour Energy Systems, Inc. v. Director, Division of Taxation; Docket No. 007698-2004; opinion by Menyuk, J.T.C., decided April 3, 2007. For plaintiff - Wendi L. Kotzen (Ballard Spahr Andrews Ingersoll, LLP, attorneys); for defendant - Heather Lynn Anderson (Stuart Rabner, Attorney General of New Jersey, attorney).

Plaintiff contractor is liable for use tax on parts used in repairing and maintaining commercial heating systems under service contracts, notwithstanding that the contractor collected sales tax from its customers on the price of the service contracts. The Director's regulations and other published guidance clearly state that a contractor's purchase of parts and materials used in maintaining, servicing or repairing real property is a retail sale, not a sale for resale. N.J.S.A. 54:32B-2(e)(2); N.J.A.C. 18:24-5.8. The Director's refusal to abate interest and penalty was not an abuse of discretion. N.J.S.A. 54:49-11(a). The Director had no discretion to abate amnesty penalty. N.J.S.A. 54:53-18(b).

(Copying fee and Postage \$14.34)

**LOCAL PROPERTY TAX - CHAPTER 101 - SPOT ASSESSMENT - BILL  
ORIGINATION CLAUSE - UNIFORMITY CLAUSE - CLASS ACTION  
CERTIFICATION**

Tax Court; Chadwick 99 Assocs. et al. v. Director, Div. of Taxation, et al.; Docket Nos. 005611-2002, 005630-2002, 005631-2002, 005625-2002, 005629-2002, 005621-2002, 005622-2002, 005627-2002, 005628-2002, 005626-2002, 005624-2002, 005632-2002, 005623-2002; opinion by Menyuk, J.T.C.; decided May 10, 2007. For plaintiff - Steven R. Irwin (The Irwin Law Firm, P.A., attorneys); for defendants Director, Division of Taxation and Camden County Board of Taxation - Julian Gorelli (Stuart Rabner, Attorney General of New Jersey, attorney); for defendants Assessor, Mayor and Council of Lindenwold Borough - John B. Kearney (John B. Kearney & Assocs., P.C., attorneys).

Apartment building owners' challenge to L. 2001, c. 101, ("Chapter 101") amending N.J.S.A. 54:4-23 and first introduced in the New Jersey State Senate, cannot be sustained because Chapter 101 is not a revenue-raising measure, and therefore is not unconstitutional under the Bill Origination Clause, N.J. Const. art. IV, § 6, ¶ 1. Chapter 101 does not direct or contemplate arbitrary, discriminatory assessment and does not violate the Uniformity Clause, N.J. Const. art. VIII, § 1, ¶ 1(a), or the Equal Protection Clause, U.S. Const. amend. XIV, § 1, on its face. The plaintiffs cannot be certified as a class under R. 4:32-1 because N.J.S.A. 54:3-21 requires each taxpayer aggrieved by its assessment to file a complaint.

**LOCAL PROPERTY TAX- IMPOSITION OF ROLLBACK TAXES**

Tax Court; Township of Wantage v. Rivlin Coporation; Docket No. 008697-2006; opinion by Kuskin, J.T.C., decided by Letter Opinion February 27, 2007, Formal Opinion May 25, 2007. For plaintiff - Michael S. Garofalo (Laddey, Clark & Ryan, attorneys); for defendant - James P. Fox (Morris, Downing & Sherred, attorneys).

Where a portion of a tax lot, otherwise qualifying for farmland assessment, is used for "independent commercial operations not conducted for the benefit of the farm but as a completely separate business activity," the portion so used is subject to rollback taxes.



**LOCAL PROPERTY TAX - REVALUATION - REVIEW OF COUNTY BOARD'S ORDER**

Tax Court; Borough of Totowa v. Passaic County Board of Taxation and Director, Division of Taxation; Docket No. 007987-2006; opinion by Kuskin, J.T.C., decided letter opinion March 30, 2007, formal opinion June 1, 2007. For plaintiff - Robert E. Corrado (Corrado & Corrado, attorneys); for defendant - Benil Abraham (Stuart Rabner, Attorney General of New Jersey, attorneys).

When ordering a municipality to revalue, a county board of taxation need not rely on all of the criteria set forth in N.J.A.C. 18:12A-1.14(b)(1). The court will vacate or reverse a county board's revaluation order only if the county board's entry of the order was arbitrary, capricious, unreasonable, or illegal.

**CORPORATION BUSINESS TAX - AMICUS CURIAE**

Tax Court; Pfizer, Inc. v. Director, Division of Taxation; Docket No. 000055-2006; opinion by Kuskin, J.T.C., decided letter opinion April 13, 2007, formal opinion June 1, 2007. For plaintiff - Richard A. Leavy, (McDermott, Will & Emery, LLP, attorneys); for defendant - Marlene G. Brown, (Stuart Rabner, Attorney General of New Jersey, attorney); Kyle O. Sollie (Reed Smith, LLP, attorneys) for General Engines Company, Inc.

Rule 1:13-9 establishes a liberal standard for granting an application to participate in a matter as an amicus curiae. Here, however, the application by General Engines Company, Inc. to participate as amicus curiae as to the issue of the facial constitutionality of a statute is denied. General Engines has an appeal pending involving the same issue. Because the court should have the benefit of full legal argument by General Engines in order to avoid inconsistent results in the Pfizer and General Engines appeals, General Engines is ordered to file a summary judgment motion in its separate matter in accordance with the schedule established for the filing of a summary judgment motion in the Pfizer matter.

**LOCAL PROPERTY TAXATION - EXEMPTION - ASSISTED LIVING RESIDENCE**

Tax Court; Presbyterian Home at Pennington, Inc. v. Pennington Borough; Docket No. 002348-2002; Pennington Borough v. Presbyterian Home at Pennington, Inc.; Docket Nos. 004027-2003, 005159-2004, 007504-2005; opinion by Menyuk, J.T.C.; decided June 14, 2007. For Pennington Borough - Walter R. Bliss, Jr. (Walter R. Bliss, Jr., Esq., attorney); for Presbyterian Home at Pennington, Inc. - Bruce W. Clark (Dechert, LLP, attorneys).

An assisted living residence did not qualify for exemption for tax year 2002 because it was not actually operated on the valuation date of October 1, 2001. The residence did not qualify for exemption for tax years 2003 and 2004 because the property was not used for "hospital purposes" within the meaning of N.J.S.A. 54:4-3.6.

**CORPORATION BUSINESS TAX - I.R.C. SECTION 338(h)(10) ELECTION  
- NONOPERATIONAL INCOME - APPORTIONMENT TO NEW JERSEY**

Tax Court; McKesson Water Products Company v. Director, Division of Taxation; Docket No. 000156-2004; opinion by Kuskin, J.T.C., Bench Opinion March 9, 2007; Formal Opinion August 13, 2007. For plaintiff - David J. Shipley (McCarter & English, LLP, attorneys); for defendant - Marlene G. Brown (Stuart Rabner, Attorney General of New Jersey, attorney).

When an I.R.C. Section 338(h)(10) election is made in connection with the sale by a parent corporation of all shares of stock of its wholly-owned subsidiary, the income deemed realized by the subsidiary from the deemed sale of its assets is nonoperational income under N.J.S.A. 54:10A-6.1(a) and, for purposes of state taxation, must be assigned to the state in which the subsidiary's principal place of business is located. If the corporation's principal place of business is outside of New Jersey, the deemed income may not be apportioned to New Jersey.

**CORPORATION BUSINESS TAX - 42 U.S.C.A. § 1983 and § 1988.**

Tax Court; General Engines Company, Inc. Director, Division of Taxation; Docket No. 008807-2006; opinion by Kuskin, J.T.C., Letter Opinion decided May 14, 2007; Formal Opinion. August 15, 2007. For plaintiff - Kyle O. Sollie (Reed Smith LLP, attorneys); for defendant - Marlene G. Brown (Stuart Rabner, Attorney General of New Jersey, attorney).

A taxpayer may not obtain relief under 42 U.S.C.A. § 1983 and § 1988 in connection with an appeal of an assessment of corporation business tax. The holding in General Motors Corp. v. City of Linden, 143 N.J. 336 (1996), that New Jersey law "provides an adequate remedy for relief from unconstitutional tax assessments," Id. at 340, is as applicable in the context of a corporation business tax appeal as it is in the context of a local property tax appeal.

**SALES AND USE TAX - EXEMPTION - TELECOMMUNICATIONS EQUIPMENT**

Tax Court; RCN Telecom Services, Inc. v. Director, Division of Taxation; Docket No. 000377-2006; opinion by Kuskin, J.T.C., decided - bench opinion May 25, 2007; formal opinion September 10, 2007. For plaintiff - Sean M. Lipsky and Jeffrey H. Schechter (Cole, Schotz, Meisel, Forman & Leonard, attorneys); for defendant - Marlene G. Brown (Anne Milgram, Attorney General of New Jersey, attorney).

In order to qualify for exemption from New Jersey Sales and Use Tax under N.J.S.A. 54:32B-8.13c or -8.13e, the machinery, apparatus, and equipment purchased by plaintiff must have been used "directly and primarily" for "receiving . . . or initiating, transmitting and switching . . . interactive telecommunications service" under N.J.S.A. 54:8.13c and for the "transmission of radio or television information" under N.J.S.A. 54:8.13e. Machinery, apparatus, or equipment not so used does not qualify for exemption even if necessary and essential for, or integral to, plaintiff's operations.

**LOCAL PROPERTY TAXATION - EXEMPTION - VIOLATION OF LOCAL ZONING ORDINANCE**

Tax Court; Society of the Holy Child Jesus, d/b/a Oak Knoll School v. Summit City, Docket Nos. 007403-2005 and 000352-2006; opinion by Small, P.J.T.C., decided September 17, 2007. For plaintiff - Christopher John Stracco (Day Pitney, LLP, attorneys); for defendant - Garry J. Roettger (Skoloff & Wolfe, attorneys).

Property used in violation of local zoning ordinance cannot qualify for tax exemption under N.J.S.A. 54:4-3.6. The holdings in Byram Tp v. Western World, Inc., 111 N.J. 222 (1988), and Cheyenne Corp. v. Tp. of Byram, 248 N.J. Super. 588 (App. Div. 1991), that land may not obtain farmland assessment where its actual use qualifies for such preferential tax treatment but that use of the land violates local zoning ordinances or restrictions, is applicable in the context of tax exemptions under N.J.S.A. 54:4-3.6.

**LOCAL PROPERTY TAX - VALUE; FUNCTIONAL OBSOLESCENCE**

Tax Court; BASF Corp. Coating & Ink Division v. Belvidere Town; Docket Nos. 001514-2004, 001198-2005 and 001128-2006; opinion by Kuskin, J.T.C., decided December 14, 2007. For plaintiff - Frank E. Ferruggia and Daniel P. Zazzali (McCarter & English, attorneys); for defendant - Richard M. Conley and David C. Lukens (Conley & Sozansky, attorneys).

In valuing a large multi-building industrial facility, where the buildings are located on 30 acres of a 108.45 acre site:

- 1) the portion of the land not containing the buildings is valued based on a highest and best use as zoned in the absence of adequate proofs that a zone change or use variance was likely; and
- 2) a deduction for functional obsolescence, based on a comparison of reproduction cost with replacement cost, is not allowed where the calculation of replacement cost is unreliable.



**GROSS INCOME TAX; LIMITED LIABILITY COMPANIES ARE NOT PARTNERSHIPS**

Tax Court; Michael & Helen Kaplan v. Director, Division of Taxation; Docket No. 000032-2006 and Morris & Sandra Lisman-Kaplan v. Director, Division of Taxation; Docket No. 000039-2006; opinion by Kuskin, J.T.C., decided January 8, 2008. For plaintiff - Harold Leib (Harold Leib & Associates, P.A., attorneys) and Ronald S. Blumstein; for defendant - Ramanjit K. Chawla (Anne Milgram, Attorney General of New Jersey, attorney).

In order to obtain the benefits of a tax-free exchange under I.R.C. § 1031(a), plaintiffs formed two single-member limited-liability companies to acquire, as tenants in common, two apartment complexes. The court rejects the taxpayers' contention that the property owners should be treated as partnerships or joint ventures under the New Jersey Gross Income Tax Act so that losses from the apartment complexes can be applied against other partnership income earned by plaintiffs.

**SALES AND USE TAX - INTERNET SELLER - DROP SHIPMENT -  
PHYSICAL PRESENCE**

Tax Court; Drugstore.com, Inc. v. Director, Division of Taxation; Docket No. 000637-2003; opinion by Menyuk, J.T.C., Decided February 11, 2008. For plaintiff - Sheryl M. Mintz (Herold and Haines, attorneys), and Arthur R. Rosen and Ann E. Schofield, of the New York bar, admitted pro hac vice; for defendant - Marlene G. Brown (Anne Milgram, Attorney General of New Jersey, attorney).

Plaintiff, the operator of a website located in Washington State with a physical presence in New Jersey, contested an assessment of sales and use tax on sales of merchandise said to have been made by its out-of-state subsidiary through the website and delivered from a New Jersey warehouse to New Jersey customers in a drop shipment transaction. Plaintiff and not its subsidiary was the actual seller of merchandise liable for collection of the tax where the subsidiary never took title to or possession of the merchandise that it allegedly sold. Plaintiff performed all of the subsidiary's functions in connection with the sales transactions.

**GROSS INCOME TAX - STATUTE OF LIMITATIONS**

Tax Court; Mark DiStefano and Margaret DiStefano v. Director, Division of Taxation; Docket no. 000943-2005; opinion by Bianco, J.T.C., decided January 30, 2008. For plaintiff - Susan A. Feeney (McCarter & English, attorneys; Ms. Feeney and Open Weaver Banks, on the brief); for defendant - Amina Maddox (Anne Milgram, Attorney General of New Jersey, attorney).

The Director's time to make a deficiency assessment under N.J.S.A. 54A:9-4 runs from the date on which an original tax return is filed. The time within which the Director may make an assessment is not extended by the taxpayer's filing of an amended return.

**TRANSFER INHERITANCE TAX - TIME TO PROTEST AN ASSESSMENT**

Tax Court; Estate of Pelligra v. Director, Division of Taxation, Docket No. 004954-2004; opinion by Pizzuto, J.T.C.. Decided February 20, 2008. For plaintiff - Lawrence B. Diener ; for defendant - Michael J. Spina (Anne Milgram, Attorney General of New Jersey, attorney).

The ninety-day period allowed by N.J.S.A. 54:49-18 a for the filing of an administrative protest of an additional transfer inheritance tax assessment begins to run upon receipt of notice by the representative of the estate. The Division's motion to dismiss for failure to protest within ninety days of the date on the notice is denied. Further proceedings on the merits of the assessment are directed.

**SALES TAX; UNTIMELY FILING OF REFUND CLAIM; WAIVER, ESTOPPEL,  
LACHES**

Tax Court; M.J. Ocean, Inc. v. Director, Division of Taxation ;  
Docket No. 000163-2007; opinion by Kuskin, J.T.C., decided  
February 14, 2008. For plaintiff - Neil Grossman (Bronstein,  
Gewirtz & Grossman, attorneys); for defendant - Daniel C. Munce  
(Anne Milgram, Attorney General of New Jersey, attorney).

Plaintiff's appeal from a partial denial of its sales tax  
refund claim is dismissed where the claim was filed almost two  
years after expiration of the four-year time limit set forth in  
N.J.S.A. 54:32B-20(a). Although the Director considered the  
claim on the merits, granted a partial refund, and did not raise  
the issue of the timeliness of the claim until after plaintiff's  
appeal was filed, the equitable doctrines of waiver, estoppel,  
and laches did not preclude dismissal of the appeal.

**ESTATE TAX - L. 2002, c. 31, § 1 - PAYMENT OF TAXES FROM  
RESIDUARY ESTATE - MARITAL DEDUCTION**

Tax Court; Estate of Stevenson v. Director, Division of Taxation; Docket No. 008300-2007; opinion by Menyuk, J.T.C., letter opinion released January 4, 2008, formal opinion released February 19, 2008. For plaintiff - Richard T. DeCou (Capehart & Scatchard, attorneys); for defendant - Heather Lynn Anderson (Anne Milgram, Attorney General of New Jersey, attorney).

Director's calculation of marital deduction was consistent with the terms of the written will and the New Jersey estate tax law as amended in 2002. Taxpayer's argument to read the law and the will as if the New Jersey law had not been amended so as to comply with federal tax principles rejected. Tabular comparison of two calculations illustrates the complex argument of both parties.

**SALES TAX; REFUNDS FOR UNCOLLECTIBLE ACCOUNTS RECEIVABLE**

Tax Court; Home Depot U.S.A., Inc. v. Director, Division of Taxation; Docket No. 006005-2005; opinion by Kuskin, J.T.C., decided March 14, 2008. For plaintiff - Paul H. Frankel, Irwin M. Slomka of the New York bar (admitted pro hac vice) and Amy F. Nogid of the New York bar (admitted pro hac vice) (Morrison Foerster, attorneys); for defendant - Marlene G. Brown (Anne Milgram, Attorney General of New Jersey, attorney).

Plaintiff's private label credit cards were issued to plaintiff's customers by three finance companies to which plaintiff paid service fees that included unquantified and unallocated amounts intended to reimburse the finance companies for, among other services and expenses, accounts receivable collection losses. The finance companies directly bore all risks of those collection losses and reimbursed plaintiff between 86.2% and 100% of all credit card charges, including sales tax collected by plaintiff and remitted to the State. Under these circumstances, plaintiff is not entitled to a refund of sales tax it collected for and remitted to the State with respect to the uncollectible accounts receivable owned by the finance companies.

**LOCAL PROPERTY TAX - SCHOOL AID, CHAPTER 123, AND COUNTY  
EQUALIZATION RATIOS - TIME TO AND CONTEXT OF CHALLENGES -  
USABILITY OF SALES - ASSEMBLAGES AND MULTIPLE PARCEL  
TRANSACTIONS**

Tax Court; City of Atlantic City v. Director, Division of Taxation; Docket No. 007373-2007; City of Atlantic City v. Atlantic County Board of Taxation; Docket No. 007351-2007; opinion by Small, P.J.T.C., letter opinion decided February 8, 2008, formal opinion decided April 8, 2008. For plaintiff - Daniel J. Gallagher (Miller & Gallagher, attorney); for defendants - Nicole T. Minutoli (Anne Milgram, Attorney General of New Jersey, attorney).

A municipality's challenge to its chapter 123 ratio may not, as a matter of law, be brought separately from a challenge to the school aid ratio or independently from the appeal of a specific tax assessment. A chapter 123 ratio successfully challenged and revised in the context of an individual tax appeal is applicable only in that individual tax appeal.

Even if the municipality had timely challenged its school aid and county equalization ratios, it could not have prevailed on the merits because the Director and County Board of Taxation properly excluded the sales from her and its calculations as a non-usable assemblage and part of a multiple parcel transaction. N.J.A.C. 18:12-1.1(a).



**STATE TAX - CORPORATION BUSINESS TAX - RIGHT TO ALLOCATE  
INCOME AND FAIR APPORTIONMENT**

Tax Court; New Jersey Natural Gas Co. v. Director, Division of Taxation; Docket Nos. 000240-2005 & 007284-2005; opinion by Small, P.J.T.C., decided April 17, 2008. For plaintiff - Stephen Orlofsky and Kit Applegate; and Michael J. Semes and Robert P. Harrill, Jr. admitted pro hac vice (Blank Rome, LLP, attorneys); for defendant - Heather L. Anderson (Anne Milgram, Attorney General of New Jersey, attorney).

Taxpayer did not maintain a regular place of business outside New Jersey and accordingly, was not entitled to allocate income away from New Jersey in computing income taxable under New Jersey's Corporation Business Tax Act, N.J.S.A. 54:10A-6 (Section 6).

In Hess Realty v. Director, Division of Taxation, 10 N.J. Tax 63, 88 (Tax 1988), a 250% difference in tax calculated using the apportionment formula in Section 6 versus the crediting provisions of N.J.S.A. 54:10A-8 (Section 8) required, in the absence of additional evidence, the use of the benchmark Section 6 apportionment formula. In this case a 4.18% to 15.66% difference did not require use of the Section 6 apportionment formula under authority of Section 8.

The tax calculated under Section 8 was fairly related to the taxpayer's activities in New Jersey and accordingly, did not violate the Due Process and Commerce Clauses of the United States Constitution.

**SALES AND USE TAX - N.J.S.A. 54:32B-20, OVER-COLLECTION-  
CONSUMER FRAUD**

Tax Court; Elizabeth Kawa v. Wakerfern Food Corp. et al.; Docket No. 008717-2006; opinion by Menyuk, J.T.C., decided April 3, 2008. For plaintiff - Philip A. Tortoreti (Tortoreti Tomes & Callahan P.C., attorneys); for defendant - Edward J. Fanning, Jr. and Michael A. Guariglia (McCarter & English, LLP, attorneys).

When a vendor collects more sales tax from its customer than is actually due and when the vendor remits the over-collected tax to the State, N.J.S.A. 54:32B-20(a), permitting application to the Director for a refund, provides the exclusive remedy for the refund of the overpaid tax to the customer. N.J.S.A. 54:32B-20(c) and the consumer fraud act did not create any additional remedies for the over-collection of sales tax in these circumstances.

**MANSION TAX - EFFECTIVE DATE; AMENDMENT OF CONTRACT - PRICE,  
FULLY EXECUTED**

Tax Court; Wells REIT II-80 Park Plaza, LLC v. Director, Division of Taxation; Docket No. 006102-2007; opinion by Kuskin, J.T.C., decided May 23, 2008. For plaintiff - Joseph A. Boyle (Kelley, Drye & Warren, LLP, attorneys); for defendant - Heather Lynn Anderson (Anne Milgram, Attorney General of New Jersey, attorney).

The contract for plaintiff's purchase of an office building was not "fully executed before July 1, 2006," as required for exemption from mansion tax under N.J.S.A. 46:15-7.4, because an amendment to the contract dated after July 1, 2006 reduced the purchase price from \$155,000,000 to \$147,500,000.

**CORPORATION BUSINESS TAX - THROWOUT RULE; FACIAL  
CONSTITUTIONALITY**

Tax Court; opinion by Kuskin, J.T.C., decided May 29, 2008. Pfizer, Inc. v. Director, Division of Taxation, Docket No. 000055-2006, for plaintiff - Peter L. Faber, pro hac vice, and Leah M. Samit (McDermott, Will & Emery, LLP, attorneys); General Engines Company, Inc. v. Director, Division of Taxation, Docket No. 008807-2006, for plaintiff - Kyle O. Sollie (Reed Smith LLP, attorneys); Federated Brands, Inc. v. Director, Division of Taxation, Docket No. 008806-2006, for plaintiff - Paul H. Frankel and Mitchell A. Newmark (Morrison & Foerster LLP, attorneys); Whirlpool Properties, Inc. v. Director, Division of Taxation, Docket No. 000066-2007, for plaintiff - Paul H. Frankel and Mitchell A. Newmark (Morrison & Foerster LLP, attorneys); for amici curiae New Jersey State Chamber of Commerce and New Jersey Business & Industry Association - Michael A. Guariglia (McCarter & English, attorneys); for defendant - Marlene G. Brown, (Anne Milgram, Attorney General of New Jersey, attorney).

The "Throwout Rule" contained in N.J.S.A. 54:10-6(B) is facially constitutional under the Due Process, Commerce, and Supremacy Clauses of the United States Constitution because the Rule can operate constitutionally in at least some circumstances.

**SALES TAX - INADEQUATE RECORDS; PRESUMPTION OF CORRECTNESS.**

Tax Court; Daniel H. Kramer v. Director, Division of Taxation; Docket No. 008707-2006; opinion by Kuskin, J.T.C., decided May 23, 2008. For plaintiff - Chester Kosarek (Kosarek and Keane, LLC, attorneys); for defendant - Jill C. McNally (Anne Milgram, Attorney General of New Jersey, attorney).

Plaintiff failed to maintain or supply to the Director, in the context of an audit, adequate records to demonstrate that his business was limited to tax exempt services. Documents supplied in discovery did not cure the deficiency. Consequently, plaintiff failed to overcome the presumption that the Director's assessment of sales tax was correct.

**HOMESTEAD PROPERTY TAX REIMBURSEMENT - TAKING THROUGH  
EMINENT DOMAIN - THREE-YEAR RESIDENCY REQUIREMENT -  
PRINCIPLE OF TACKING**

Tax Court; Sylvia Anderson v. Director, Division of Taxation; Docket No. 008047-2007; opinion by Small, P.J.T.C., decided June 5, 2008. For plaintiff - Joanne Gottesman (Rutgers Civil Practice Clinic, Rutgers School of Law, Camden, attorney); and Elizabeth Merrill and Chandana Ravindranath, legal interns pursuant to R. 1:21-3(b); for defendant - Marikae Toye (Anne Milgram, Attorney General of New Jersey, attorney).

Because N.J.S.A. 54:4-8.67 as enacted and currently drafted clearly and unambiguously imposes a three-year residency requirement on claimants in order to become eligible for homestead property tax reimbursement, taxpayer's failure to reside in and pay taxes on her property for three consecutive years prior to the filing of her reimbursement applications make her ineligible to receive reimbursement under the statute.

Equity does not require the court to tack on the period taxpayer paid taxes at her prior residence, subsequently taken by eminent domain, to the years taxpayer resided at her current residence such that taxpayer would meet the statute's three-year residency requirement.

**LOCAL PROPERTY TAX - VALUE OF RESIDENCE; FAILURE TO FILE  
COUNTERCLAIM TO TAXPAYER'S APPEAL OF COUNTY BOARD JUDGMENT  
IN REVALUATION YEAR - PRESUMPTION OF CORRECTNESS**

Tax Court: Nazmi and Aida Elrabie v. Borough of Franklin Lakes; Docket No. 010083-2007; opinion by DeAlmeida, J.T.C., decided July 11, 2008. For plaintiffs Andrew S. Kessler (Marcus, Brody, Ford, Kessler & Sahner, LLC); for defendant William T. Smith (Hook, Smith & Meyer, attorneys).

The court concluded that the value of a residence exceeded the reduced assessment of the county board judgment. Because the municipality had failed to file a counterclaim in this revaluation year challenging the county board judgment, the judgment of the county board was affirmed.

**LOCAL PROPERTY TAX - EXEMPTION - RUTGERS UNIVERSITY -  
FAMILY HOUSING**

Tax Court; Russell E. Stoddard v. Rutgers, The State University, Trustees of Rutgers College, and Township of Piscataway; Docket No. 003703-2008; opinion by Menyuk, J.T.C., Decided August 1, 2008. For plaintiff - David B. Rubin (David B. Rubin, P.C., attorney); for defendants Rutgers, The State University of New Jersey and the Trustees of Rutgers College - Richard F. Ricci and Thomas Dolan (Lowenstein Sandler, attorneys); For defendant Township of Piscataway - James F. Clarkin III (Clarkin & Vignuolo, P.C., attorneys).

Plaintiff taxpayer challenged the property tax exemption granted to Rutgers' housing units for graduate students and their families. The court concluded that the provision of student's family housing by Rutgers was a public purpose under N.J.S.A. 54:4-3.3 and was therefore exempt from taxation.



**LOCAL PROPERTY TAX - VALUATION - COST METHOD -  
ENTREPRENEURIAL PROFIT - FUNCTIONAL OBSOLESCENCE**

Tax Court; Westwood Lanes, Inc. v. Garwood Bor.; Docket Nos. 004258-2006 and 005200-2007; opinion by Small, P.J.T.C., decided August 8, 2008. For plaintiff - Michael M. Stadler (Michael M. Stadler, P.A.); for defendant - Robert F. Renaud (Palumbo & Renaud).

Entrepreneurial profit should be included in a property's market value even where the property is custom-built.

The subject property's deficiency, a low parking ratio, constituted functional obsolescence because the property lacked an adequate parking ratio which comparable properties in the market had. The deficiency was curable because it could be remedied through the leasing or purchase of additional parking space.

Plaintiff's expert's estimation of functional obsolescence, calculated by deducting the full cost of purchasing an adjacent parking lot, which resulted in a deduction of more than 33% of the estimated value of the property before obsolescence and amounted to more than 50% of the expert's final estimate of value, was inadequate and raised questions as to the expert's conclusion of highest and best use.

**LOCAL PROPERTY TAX - MANSION TAX - EXEMPTION - AMENDMENT OF CONTRACT.**

Tax Court; SCI ITC South Fund, LLC v. Director, Division of Taxation; Docket No. 000372-2007; opinion by Small, P.J.T.C., decided August 6, 2008. For plaintiff - Nicholas Racioppi, Jr., Robert C. Daleo and Matthew H. Lewis (Riker, Danzig, Scherer, Hyland & Perretti LLP); for defendant - Marikae G. Toye (Anne Milgram, Attorney General of New Jersey, attorney).

The contract for plaintiff's purchase of shopping center property was not "fully executed before July 1, 2006," as required for exemption from mansion tax under N.J.S.A. 46:15-7.4, because an amendment to the contract dated July 1, 2006 made significant and material changes to the contract's essential property and price terms.

**SALES TAX/CORPORATION BUSINESS TAX - AUDIT - INADEQUATE  
RECORDS - ESTIMATED RECEIPTS - SUMMARY JUDGMENT**

Tax Court: Coliseum Pizzeria, Inc. v. Director, Division of Taxation; Docket No. 007864-2004; opinion by Pizzuto, J.T.C., decided September 22, 2008. For plaintiff - Stanley L. Wyrzykowski; for defendant - Heather Lynn Anderson (Anne Milgram, Attorney General of New Jersey, attorney).

The Director, Division of Taxation is entitled to summary judgment sustaining her assessment based on audit reconstruction in the absence of adequate records of the taxpayer's receipts where the taxpayer did not tender any particular issue as to the reasonableness of the reconstruction methodology.

**USE TAX - URBAN ENTERPRISE ZONE, COMMERCE CLAUSE**

Tax Court; William R. Huff and Samurai, L.L.C. v. Director, Division of Taxation; Docket No. 010826-2007; opinion by Kuskin, J.T.C., Memorandum Opinion July 3, 2008; Formal Opinion September 15, 2008. For plaintiff - Bryan Bloom; for defendant - Marikae G. Toye (Anne Milgram, Attorney General of New Jersey, attorney).

In an Urban Enterprise Zone, where sales by qualified vendors are exempt from one-half of the sales tax payable under N.J.S.A. 54:32B-3, a similar exemption from one-half of the use tax payable under N.J.S.A. 54:32B-6 is required by the Commerce Clause only if the purchase of the tangible personal property that resulted in the use tax obligation also could have been made from a qualified vendor in the Urban Enterprise Zone.

**GROSS INCOME TAX - RESIDENT CREDIT - VOLUNTARY PAYMENT OF TAX  
TO FOREIGN JURISDICTION - RECIPROCAL PERSONAL INCOME TAX  
AGREEMENT- ABATEMENT OF INTEREST ON ASSESSMENT**

Tax Court: Teimouraz and Nana Vassilidze v. Director, Division of Taxation; Docket No. 010946-2007; opinion by DeAlmeida, J.T.C., decided October 24, 2008. Plaintiffs Teimouraz and Nana Vassilidze appearing pro se; for defendant Heather Lynn Anderson (Anne Milgram, Attorney General of New Jersey, attorney).

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.

**LOCAL PROPERTY TAX -AFTER FAILURE TO SUPPLY INCOME AND EXPENSE INFORMATION - CHAPTER 91 (N.J.S.A. 54:4-34); REASONABLENESS HEARING**

Tax Court; Lucent Technologies Inc. v. Berkeley Heights Township; Docket Nos. 002223-2006 and 002910-2007; opinion by Kuskin, J.T.C., decided December 2, 2008. For plaintiff - Michael James Guerriero (Day Pitney LLP, attorneys); for defendant - Saul A. Wolfe and David B. Wolfe (Skoloff & Wolfe, P.C., attorneys).

For purposes of a reasonableness hearing under N.J.S.A. 54:4-34 (Chapter 91), the data upon which the assessor relied in setting the assessment and the assessor's methodology are presumed to be reasonable. The taxpayer has the burden of overcoming the presumption by producing evidence that is "definite, positive and certain in quality and quantity." Ocean Pines Ltd. v. Borough of Point Pleasant, 112 N.J. 1, 12 (1988). The standards applicable to a determination of whether an assessment is reasonable under Chapter 91 are different from the standards applicable to a determination of whether an appraisal is adequate. Here, the 2006 and 2007 assessments on plaintiff's property satisfied the Chapter 91 reasonableness standards.

**STATE TAXATION - REALTY TRANSFER FEE - MANSION TAX - FULLY  
EXECUTED CONTRACT - AMENDMENT IS MODIFICATION NOT NOVATION**

Tax Court, Chicago Five Portfolio, LLC v. Director, Division of Taxation; Docket No. 000159-2007, opinion by Bianco, J.T.C., decided December 11, 2008. For plaintiff - Robert L. Selvers (Wilentz, Goldman & Spitzer, attorneys); for defendant - Heather Lynn Anderson (Anne Milgram, Attorney General of New Jersey, attorney).

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).

**LOCAL PROPERTY - PARSONAGE EXEMPTION - EXISTENCE OF HOUSE  
OF WORSHIP - COLLECTION OF SECTION 8 HOUSING ASSISTANCE  
RENTAL PAYMENTS ON PARSONAGE PROPERTIES**

Tax Court: Mesivta Ohr Torah of Lakewood v. Township of Lakewood; Docket No. 008580-2007; Docket No. 008585-2007; opinion by DeAlmeida, J.T.C., decided December 10, 2008. For plaintiff - Paul Tannenbaum (Zipp & Tannenbaum, LLC, attorneys); for defendant - Michael J. Caccavelli and Robert E. Spiotti (DeCotiis, Fitzpatrick, Cole & Wisler, LLP, attorneys).

Two residences owned by plaintiff qualify for exemption as parsonages pursuant to N.J.S.A. 54:4-3.6 because those residences house the officiating Rabbis at plaintiff's house of worship. Plaintiff need not provide the court with the names of every member of its congregation to establish that it operates a house of worship. Plaintiff's receipt of Section 8 Housing Assistance rental payments with respect to the Rabbis' rental of the residences does not preclude a finding of tax exemption pursuant to N.J.S.A. 54:4-3.6.



**LOCAL PROPERTY TAX - REASSESSMENT - CHAPTER 101 - N.J.S.A.  
54:4-23, CONSTITUTIONALITY OF COMPLIANCE PLAN**

Tax Court; Chadwick Associates, et. al. v. Director, Div. of Taxation, et. al.; Docket Nos. 005611-2002, 005621-2002, 005622-2002, 005623-2002, 005624-2002, 005625-2002, 005626-2002, 005627-2002, 005628-2002, 005629-2002, 005632-2002; opinion by Menyuk, J.T.C., decided October 8, 2008, released March 17, 2009. For plaintiffs - Amber Heinze (The Irwin Law Firm, P.A., attorneys); for defendants Director, Division of Taxation and Camden County Board of Taxation - Julian Gorelli (Anne Milgram, Attorney General of New Jersey, attorney) and for defendants Assessor, Mayor and Council of Lindenwold Borough - John B. Kearney (John B. Kearney & Associates, P.C., attorneys).

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.

LOCAL PROPERTY TAX - FAILURE TO RESPOND TO ASSESSOR'S REQUEST FOR INCOME AND EXPENSE INFORMATION (CHAPTER 91) - NON-INCOME-PRODUCING PROPERTY - CESSATION OF RENTAL INCOME DUE TO RENOVATION OF APARTMENT BULIDINGS

Tax Court: Thirty Mazel, LLC v. City of East Orange; Docket No. 000371-2008; Lenox Realty Associates, LLC v. City of East Orange, Docket Nos. 000373-2008 and 000376-2008: opinion by DeAlmeida, J.T.C., decided January 16, 2009. For plaintiffs - Jonathan M. Bernstein (Schneck Holtzman, LLC, attorneys); for defendant - Jennifer R. Jacobus (Wolff & Samson, PC, attorneys).

When property previously recognized as income producing ceases to produce income and the property owner fails to notify the assessor of the change through a response to a Chapter 91 request for income and expense information, the tax appeal is subject to dismissal. The Appellate Division's recent decision in H.J. Bailey Co. v. Township of Neptune, 399 N.J. Super. 381 (App. Div. 2008), does not conflict with its prior holding in Alfred Conhagen, Inc. v. Borough of South Plainfield, 16 N.J. Tax 470 (App. Div.), certif. denied, 151 N.J. 74 (1997).

**ESTATE TAX - STANDING - RESIDUARY BENEFICIARY OF QUALIFIED  
TERMINAL INTEREST PROPERTY ("QTIP") TRUST**

Tax Court: Joanne LaBarbera v. Director, Division of Taxation; Docket No. 000020-2008; opinion by DeAlmeida, J.T.C., decided January 27, 2009. For plaintiff - David B. Gaynor (Miller, Porter, Muller & Gaynor, P.C., attorneys); for defendant - Heather Lynn Anderson (Anne Milgram, Attorney General of New Jersey, attorney).

The court held that plaintiff, the residuary beneficiary of a Qualified Terminable Interest Property ("QTIP") trust, has standing to challenge an assessment of estate tax against the estate of the initial beneficiary of the trust.

**MANSION TAX - CLASSIFICATION - TIME AND FORUM TO FILE AN APPEAL**

Tax Court: Bordentown Real Estate Associates, LLC & Rising Sun 295 Plaza, LLC v. Director, Division of Taxation; Docket No. 000133-2008; opinion by Small, P.J.T.C., decided March 17, 2009. For plaintiffs - Bruce Sattin (Szaferman, Lakind, Blumstein & Blader, P.C., attorneys); for defendant - Marikae Toye, Deputy Attorney General (Anne Milgram, Attorney General of New Jersey, attorney).

Because there was no reason or opportunity for plaintiffs to challenge the property's classification except for purposes of the mansion tax, the time to file an appeal from the classification of a property in the context of the mansion tax refund claim is different from the time to file an appeal from the property's assessed value and is governed by N.J.S.A. 54:51A-14, not N.J.S.A. 54:3-21. There was insufficient evidence to determine whether the subject property is commercial or industrial. Both the Director's motion for summary judgment and plaintiffs' cross-motion for summary judgment were denied. A hearing was scheduled to resolve the sole issue of whether the subject property should have been classified as commercial or industrial by the assessor.

**USE TAX - EXEMPTION - INTERSTATE COMMERCE - YACHT - PPORIONMENT  
OF TAX**

Tax Court: Lady Frances V, LLC v. Director, Division of Taxation; Docket No. 008629-2007; opinion by Small, P.J.T.C., decided March 6, 2009. For plaintiff - George K. Miller, Jr. (Miller and Gallagher, attorneys); for defendant - Marikae Toye (Anne Milgram, Attorney General of New Jersey, attorney).

The repairing of a yacht (non-routine maintenance), its storage, and the hiring and training of a new crew constituted something other than interstate commerce. The use of the vessel in New Jersey was not entirely in interstate commerce and the plaintiff, LLC, was not a non-resident for New Jersey use tax purposes, and thus not entitled to use tax exemption pursuant to N.J.S.A. 54:32B-11. The apportioned use tax imposed on plaintiff was constitutionally permissible and statutorily authorized under the facts found in this case.

**CORPORATION BUSINESS TAX; ALTERNATIVE MINIMUM ASSESSMENT CREDIT.**

Tax Court; Equipment Leasing & Finance Association v. Director, Division of Taxation; Docket No. 010823-2007; opinion by Kuskin, J.T.C., decided March 6, 2009. For plaintiff - David J. Gutowski (Reed Smith, attorneys); for defendant - Heather Lynn Anderson (Anne Milgram, Attorney General of New Jersey, attorney).

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.

**SALES AND USE TAX - TRADE-IN CREDIT - PURCHASE AND SALE OF SAILBOATS THROUGH BROKER DOES NOT TRIGGER TRADE-IN CREDIT**

Tax Court: Marguerite T. Simon v. Director, Division of Taxation; Docket No. 010843-2007: opinion by DeAlmeida, J.T.C., decided March 4, 2009. For plaintiff - Douglas M. Standriff, attorney; for defendant - Julia F. Moore (Anne Milgram, Attorney General of New Jersey, attorney).

The trade-in credit established in N.J.S.A. 54:32B-6 does not apply where the purchase and sale of like property is conducted through a broker who does not take possession of the purchaser's old property for the purpose of resale or reduce the purchase price of new property to reflect credit for old property. Plaintiffs purchased a new sailboat through a broker approximately one month before that broker arranged for plaintiffs to sell their old sailboat to another couple. The two transactions were independent of one another and the broker never took possession of the old sailboat for purposes of resale. The court also held that custom and practice in the high-priced sailboat industry is not relevant to a determination of whether a trade-in credit under N.J.S.A. 54:32B-6 applies. The court granted the Director's motion for summary judgment and upheld her calculation of use tax.

**LOCAL PROPERTY TAX - HOSPITAL PURPOSES EXEMPTION**

Tax Court; Hunterdon Medical Center v. Township of Readington ; Docket Nos. 001064-2000, 000269-2001, 000663-2002, 000467-2003, 001414-2004, 001302-2005; opinion by Kuskin, J.T.C., decided March 26, 2009. For plaintiff - Susan A. Feeney (McCarter & English, attorneys); for defendant - Martin Allen (Bateman, Coley, Yospin, Kunzman, Davis & Lehrer, P.C., attorneys).

Based on standards set forth by the Supreme Court of New Jersey in Hunterdon Medical Center v. Township of Readington, 195 N.J. 549 (2008), second-floor space used for physical therapy services at plaintiff's building located nine miles from plaintiff's main hospital campus does not qualify for a "hospital purposes" exemption under N.J.S.A. 54:4-3.6.



**REVALUATION ORDERS - COUNTY BOARDS OF TAXATION - VACANCIES  
- QUORUM STATUTE - N.J.S.A. 54:3-25 - EXISTENCE OF A QUORUM**

Tax Court; Hainesport Township v. Burlington County Board of Taxation; Docket No. 010382-2008; opinion by Menyuk, J.T.C., decided April 1, 2009 and May 15, 2009. For plaintiff - Theodore M. Costa (Costa, Vetra, LaRosa & Costa, attorneys); for defendant - Julia Moore (Anne Milgram, Attorney General of New Jersey, attorney). Mount Laurel Township v. Burlington County Board of Taxation; Docket No. 010699-2008. For plaintiff - Christopher Norman (Norman, Kingsbury & Norman, attorneys); for defendant - Julia Moore (Anne Milgram, Attorney General of New Jersey, attorney).

Where the Burlington County Board of Taxation had an authorized membership of five and three vacancies, the two sitting members constituted a quorum for purposes of N.J.S.A. 54:3-25, because the statute does not depart from the common law rule that a quorum of the Board is a majority of its sitting members. Since both Board members voted to order Township revaluations, the orders were authorized by a majority of the quorum and were therefore valid.

**CIGARETTE TAX ACT - CIGARETTE FLOOR TAX - STATUS AS A  
"RETAIL DEALER"**

Tax Court; Kasot, Inc. t/a Atlantic Highlands Nursing Home v. Director, Div. of Taxation; Docket No. 000090-2007; opinion by Menyuk, J.T.C., decided April 23, 2009. For plaintiff - Sean Gertner (Gertner Riordan, LLC, attorneys); for defendant - Daniel C. Munce (Anne Milgram, Attorney General of New Jersey, attorney).

A nursing home that purchased cigarettes from an out-of-state, unlicensed smoke shop for sale at cost to its residents was a "retail dealer" for purposes of the Cigarette Tax Act, N.J.S.A. 54:40A-1 to -45, and therefore liable for the assessments of cigarette tax, cigarette floor tax and associated penalties and interest.

**PROPERTY TAX EXEMPTION - N.J.S.A. 54:4-3.6 - MORAL AND  
MENTAL IMPROVEMENT**

Tax Court; International Schools Services Inc., v. West Windsor Township; Docket Nos. 006669-2003, 006670-2003; opinion by Menyuk, J.T.C., decided March 27, 2009. For plaintiff - Mark D. Schorr (Crow & Associates, attorneys); for defendant - Michael J. Herbert (Herbert, Van Ness, Cayci & Goodell, attorneys).

The property used by an organization providing services to international schools did not qualify for tax exemption pursuant to N.J.S.A. 54:4-3.6 because: (1) it was not actually used for the moral and mental improvement of the general public; and (2) it was operated for the purpose of making a profit.

**ESTATE TAX - REFUND CLAIM PERIOD - PROTECTIVE REFUND CLAIMS  
- EXPENSES ASSOCIATED WITH LITIGATION INCURRED BEYOND  
REFUND CLAIM PERIOD**

Tax Court: Estate of Frank J. Ehringer v. Director, Division of Taxation; Docket No. 009126-2008: opinion by DeAlmeida, J.T.C., decided April 30, 2009. For plaintiff - Robert J. Pansulla (Gaccione, Pomaco & Malanga, attorneys); for defendant - Heather Lynn Anderson (Anne Milgram, Attorney General of New Jersey, attorney).

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.

**CORPORATION BUSINESS TAX - IMPUTATION OF INTEREST; ALLOCATION OF REVENUE TO NEW JERSEY; LATE PAYMENT AND AMNESTY PENALTIES**

Tax Court; United Parcel Service General Services Co. v. Director, Division of Taxation; Docket No. 007845-2004; UPS Telecommunications, Inc. v. Director, Division of Taxation; Docket No. 007879-2004; United Parcel Service Co. v. Director, Division of Taxation; Docket No. 007889-2004; UPS Worldwide Forwarding, Inc. v. Director, Division of Taxation; Docket No. 007890-2004; UPS Worldwide Forwarding, Inc. v. Director, Division of Taxation; Docket No. 007891-2004; opinion by Kuskin, J.T.C., decided June 5, 2009. For plaintiffs - Michael James Guerriero (Day Pitney LLP, attorneys) and Richard D. Birns and J. Edward Goff of the Pennsylvania bar, admitted pro hac vice (Birns & Goff, attorneys); for defendant - Marlene G. Brown, Deputy Attorney General (Anne Milgram, Attorney General of New Jersey, attorney).

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.

**SALES TAX - STATUTE OF LIMITATIONS - REFUND CLAIM**

Tax Court: Trump Plaza Associates v. Director, Division of Taxation; Docket No. 008825-2006; Trump Marina Associates LP v. Director, Division of Taxation; Docket No. 008827-2006; Trump Taj Mahal Associates v. Director, Division of Taxation; Docket No. 008826-2006; opinion by Small, P.J.T.C., decided June 19, 2009. For plaintiffs - Stephen M. Orlofsky, Michael J. Semes (admitted pro hac vice) and Robert P. Harrill, Jr. (admitted pro hac vice) (Blank Rome LLP, attorneys); for defendant - Heather Lynn Anderson, Deputy Attorney General (Anne Milgram, Attorney General of New Jersey, attorney).

A refund claim for mistakenly or voluntarily paid sales taxes must be filed within the four-year statute of limitations period. An equitable exception to the four-year statute of limitations is inapplicable where the State is not the cause of the mistake resulting in overpayment of taxes.

**STATE TAX - GROSS INCOME TAX - CREDIT FOR TAX PAID TO  
FOREIGN JURISDICTIONS**

Tax Court; Philip Mannino and Joanne Mannino v. Director, Div. of Taxation; Docket No. 009142-2007; opinion by Bianco, J.T.C., decided July 8, 2009. For plaintiff - Michael A. Guariglia (McCarter & English, attorneys); for defendant - Heather Lynn Anderson (Anne Milgram, Attorney General, attorney).

The numerator of the credit limitation fraction, N.J.S.A. 54A:4-1(b), is to include only the greater of two deductions from income when one of the amounts is deductible in calculating taxable income in New Jersey and not in calculating the foreign jurisdiction's taxable income and the other amount is deductible in the foreign jurisdiction but not in New Jersey. The issue of computation is controlled by Allen v. Director, Div. of Taxation, 14 N.J. Tax 385 (1994), aff'd ob. per curium, 15 N.J. Tax 704 (App. Div. 1996).



**STATE TAX - CORPORATE BUSINESS TAX - INVESTMENT COMPANY  
STATUS - CONSTITUTIONAL PRESENCE IN NEW JERSEY**

Tax Court; BIS, LP, Inc. v. Director, Division of Taxation; Docket No. 007847-2007; opinion by Bianco, J.T.C., decided July 30, 2009. For plaintiff - Michael James Guerriero (Pitney Day, LLP, attorneys); for defendant - Daniel C. Munce (Anne Milgram, Attorney General of New Jersey, attorney).

The court granted BIS LP, Inc.'s motion for summary judgment and held that in accordance with Praxair Technology, Inc. v. Director, Div. of Taxation, 404 N.J. Super 287 (App. Div. 2008), certif. granted, 199 N.J. 130 (2009), the 2006 amendment to N.J.A.C. 18:7-1.15 had been improperly applied retroactively. In addition, BIS LP, Inc. was entitled to a refund of the Corporation Business Tax it paid in 2003 because it did not have a constitutional presence in New Jersey.

**LOCAL PROPERTY TAX - "INTERESTS OF JUSTICE" EXCEPTION TO  
N.J.S.A. 54:51A-1(b) - TAX SALE CERTIFICATE SOLD BEFORE  
RETURN DATE OF THE TAX COURT MOTION**

Tax Court; U.S. Land Resources v. Borough of Roseland;  
Docket No. 007824-2007; opinion by Hayser, J.T.C., decided  
May 15, 2009. For plaintiff - Lawrence S. Berger (Berger &  
Bornstein, attorneys); for defendant - Elizabeth A.  
Valandingham (O'Donnell, McCord & DeMarzo, P.C.,  
attorneys).

A municipality's motion to dismiss a taxpayer's Tax  
Court appeal from a judgment dismissing a petition to the  
county board of taxation for failure to pay taxes at the  
time the county tax board petition was filed pursuant to  
N.J.S.A. 54:51A-1(b) was granted after a tax sale  
certificate had been sold before the Tax Court motion was  
heard. The "interests of justice" were satisfied as a  
result of the municipality's choice to collect all taxes  
due and owing by the sale of a tax sale certificate.

**LOCAL PROPERTY TAX - CONTROL OF LITIGATION WHERE LANDLORD  
AND TENANT BOTH CHALLENGE ASSESSMENT - TENANT'S RIGHT TO  
RECOVER REFUND OF TAXES**

Tax Court: Aperion Enterprises, Inc. v. Borough of Fair Lawn; Docket Nos. 003431-2003, 001894-2005, 004742-2006 and 005024-2007; opinion by DeAlmeida, J.T.C.. Decided July 24, 2009. For plaintiff Aperion Enterprises, Inc. - Seth M. Gollin (Shapiro & Croland, attorneys); for plaintiff Quo Non Ascendet - Robert A. Bernstein; for defendant - Richard Lustgarten (Goodman & Lustgarten, attorneys).

The court applied the multifactor analysis established in Village Supermarkets, Inc. v. Township of West Orange, 106 N.J. 628 (1987), to determine that tenant in triple net lease is entitled to control tax appeals, including the authority to accept settlement offers by the municipality, even though landlord, a co-plaintiff in the appeals, sought such control and authority. A triple net lease that requires tenant to pay to tax collector all local property taxes on the subject property vests in the tenant the right to collect any refunds of those taxes as the result of successful tax appeals, absent an agreement to the contrary by the parties to the lease.

**LOCAL PROPERTY TAX - DISQUALIFICATION OF ATTORNEY - FORMER  
MUNICIPAL ATTORNEY - RPC 1.9**

Tax Court: City of Atlantic City v. Zacharias Trupos, et al, and The Atlantic County Board of Taxation; Docket No. 011248-2009; opinion by Small, P.J.T.C., decided August 4, 2009. For plaintiff - George G. Frino and James L. Esposito (DeCotiis, Fitzpatrick, Cole & Wisler, LLP, attorneys); for defendants - Daniel J. Gallagher and George K. Miller (Miller, Gallagher & Grimley, attorneys for Zacharias Trupos, et al.) and Julian Gorelli, Deputy Attorney General (Anne Milgram, Attorney General of New Jersey, attorney for Atlantic County Board of Taxation).

The plaintiffs' law firm's representation of Atlantic City in prior years' tax appeals was found to be substantially related to the current representation of taxpayers challenging current tax assessments by Atlantic City. To find otherwise would do violence to the confidence and loyalty that Atlantic City had a right to expect from the law firm it had hired.

REALTY TRANSFER FEE/MANSION TAX - CALCULATION OF MANSION  
TAX WHERE RELATED GRANTORS TRANSFER TWO PROPERTIES, ONE  
SUBJECT TO THE TAX AND ONE NOT

Tax Court: The Ridgewood Commons Group, LLC v. Director,  
Division of Taxation; Docket No. 010859-2007; opinion by  
DeAlmeida, J.T.C., decided August 24, 2009. For plaintiff  
- John J. Bonelli (Porzio, Bromberg & Newman, P.C.,  
attorneys); for defendant - Julia F. Moore (Anne Milgram,  
Attorney General of New Jersey, attorney).

Where two properties, one subject to the mansion tax and  
one not, are transferred in one deed with a single-stated  
consideration, the tax may be imposed only on the property  
subject to the tax. The court rejected the Director's  
contention that the plain language of N.J.A.C. 18:16-8.5  
requires that the tax be calculated on the basis of the  
entire consideration stated in the deed. The tax should be  
calculated based on the actual allocation of consideration  
among the properties by the parties to the transfer.

**REFUND OF OVERPAID TAXES FOLLOWING APPEAL - CREDIT AGAINST  
TAX REFUND FOR DELINQUENT TAXES AND MUNICIPAL CHARGES -  
N.J.S.A. 54:3-27.2 - N.J.S.A. 54:4-134**

Tax Court; DSC Newark Enterprises, Inc. v. South Plainfield Borough; Docket Nos. 005609-2003, 006452-2004, 004707-2005, and 004513-2006; opinion by Menyuk, J.T.C., decided May 12, 2009. For plaintiff - Raquel Romero (Raquel Romero, attorney); for defendant - Martin Allen (DiFrancesco, Bateman, Coley, Yospin, Kunzman, Davis & Lehrer, P.C., attorneys).

Taxpayer was required to pay taxes during the pendency of a tax appeal, and tax sale certificates issued as a consequence of nonpayment of taxes from were not void ab initio because the settlement of the action resulted in a significantly lower assessment. The municipality was authorized by statute to deduct from the refund the amounts needed to redeem the certificates together with other municipal charges, but was required to pay interest on undisputed refund amounts it failed to refund to the taxpayer within sixty days of issuance of the Tax Court judgment pursuant to the terms of the settlement.

**LOCAL PROPERTY TAX - PARTIAL REASSESSMENT - TIMELINESS OF CONTEST**

Tax Court; Bear's Nest Condominium Association v. Bergen County Board of Taxation and Park Ridge Borough; Docket No. 005286-2006; opinion by Pizzuto, J.T.C., decided October 19, 2009. For plaintiff - Saul A. Wolfe (Skoloff & Wolfe, attorneys); for defendant Bergen County Board of Taxation - Julian F. Gorelli (Anne Milgram, Attorney General of New Jersey, attorney); for defendant Park Ridge Borough - John J. D'Anton.

An appeal to the Tax Court from a County Board acceptance of a partial reassessment under Chapter 101 filed after the deadline for filing individual tax appeals was found untimely.

**LOCAL PROPERTY TAX - FAILURE TO PAY TAXES - LIENS AGAINST PROPERTY**

Tax Court; John Trebour Trustees v. Randolph Township; Docket No. 003354-2009; opinion by Bianco, J.T.C., decided October 1, 2009. For plaintiff - Daniel G. Keough (Ventura, Miesowitz, Keough & Warner, attorneys); for defendant - Richard P. De Angelis, Jr. (McKirdy and Riskin, attorney).

The court held that the mandate to pay taxes in N.J.S.A. 54:3-27 is specific to the property subject to appeal, rather than all taxes that the taxpayer may owe at the time of filing his or her complaint. The court found this interpretation to be consistent with legal precedent that holds property taxes to be liens against the property rather than personal obligations, the legislative history of N.J.S.A. 54:3-27, and reasonable when viewing N.J.S.A. 54:3-27 *in pari materia* with other related statutes. In addition, the court held that R. 8:3-9 permits a taxpayer to withdraw a count in his or her complaint pertaining to property on appeal that is subject to a delinquency, even after the taxing municipality has filed a motion to dismiss for failure to pay taxes on that parcel.



**REALTY TRANSFER FEE - CONSIDERATION - COMMONLY OWNED ENTITIES**

Tax Court, Mack-Cali Realty, LP v. Director, Division of Taxation, Docket No. 000037-2008; opinion by Pizzuto, J.T.C., decided October 29, 2009. For plaintiff - Mark K. Follender (Scarinci & Hollenbeck, attorneys); for defendant Bergen County Clerk - John M. Carbone (Carbone & Faasse, attorneys); for defendant - Director, Division of Taxation - Julia F. Moore (Anne Milgram, Attorney General of New Jersey, attorney).

The Director's treatment of transactions between commonly owned entities for Realty Transfer Fee purposes, embodied in N.J.A.C. 18:16-6.1 (effective after the date of the subject transactions) is inconsistent with the Realty Transfer Fee statute (N.J.S.A. 46:15-5 et. seq.) in that it does not recognize the possibility of transfers between such entities for nominal consideration so as to be exempt from the Realty Transfer Fee.

**LOCAL PROPERTY TAX - REVALUATION - REVIEW OF COUNTY BOARD'S  
ORDER**

Tax Court; Mount Laurel Township v. Burlington County Board of Taxation; Docket No. 010699-2008; opinion by Menyuk, J.T.C., formal opinion December 15, 2009. For plaintiff - Christopher J. Norman (Norman, Kingsbury and Norman, attorneys); for defendant - Julia Moore (Anne Milgram, Attorney General of New Jersey, attorney).

A county tax board revaluation order lacking sufficient factual and legal conclusions is remanded to the board so that it may make an adequate record.

**CONSTITUTIONALITY OF PREMIUM TAX CAP STATUTE (1/8th Rule) -  
EXCLUSION OF HEALTH SERVICE CORPORATIONS**

Tax Court; Horizon Blue Cross Blue Shield of New Jersey v. State of New Jersey, et al., Docket No. 007354-2005; opinion by Bianco, J.T.C., decided December 15, 2009. For plaintiff - James P. Flynn (Epstein Becker & Green, attorneys); for defendant - Marlene G. Brown (Anne Milgram, Attorney General of New Jersey, attorney).

The Tax Court confirmed the Director's \$145,000,000 plus assessment on Horizon Blue Cross and Blue Shield of New Jersey, by upholding the constitutionality of N.J.S.A. 54:18A-6 ("the Premium Tax Cap Statute"), as amended by Assembly Bill A4401/Senate Bill S3006 [N.J.S.A. 54:18A-6(b)]. The court concluded that the amendment to N.J.S.A. 54:18A-6, which excludes health service corporations (HSC) from the benefits of the Premium Tax Cap Statute ("the 1/8<sup>th</sup> Rule"), was rationally related to the legitimate state purpose of raising revenue, even though Horizon, as the sole HSC in New Jersey, was the only insurer impacted by the legislation. The court found no sufficient evidence to merit a finding that the Legislature acted with any improper intent when it enacted Assembly Bill A4401/Senate Bill S3006.

**LOCAL PROPERTY TAXATION - LACK OF PROSECUTION**

Tax Court: Princeton Alliance Church v. Mount Olive Tp., Docket No. 014826-2009; opinion by Bianco, J.T.C., decided January 6, 2010. For plaintiff - Stephen Rapp (Stephen Rapp, Esq., attorney); for defendant - Fred Semrau (Dorsey & Semrau; attorney).

In a written amplification of a bench opinion rendered on November 20, 2009, the court denied Mount Olive's motion to dismiss the complaint filed by Princeton Alliance Church ("PAC"), for lack of prosecution pursuant to N.J.S.A. 54:51A-1(c)(2), since PAC's counsel appeared before the Morris County Board of Taxation ("Board") on the date of the scheduled hearing prepared to argue that PAC's property was partially exempt from taxation, and had previously submitted to the Board a legal brief containing undisputed material facts and legal arguments. The court determined that the Board wrongly dismissed PAC's complaint for lack of prosecution, and improperly disallowed PAC's counsel to present a legal argument for partial exemption instead of producing witnesses, since no statute, regulation or case law specifically requires a petitioner to present witnesses to prosecute its appeal before the Board; even when (unlike the present case) the issue is value.

**STATE TAXATION - CORPORATION BUSINESS TAX - DOCTRINE OF  
EQUITABLE RECOUPMENT**

Tax Court: General Motors Acceptance Corporation v. Director, Division of Taxation, Docket No. 010743-2007; opinion by Bianco, J.T.C., decided February 18, 2010. For plaintiff - Mitchell A. Newmark (Morrison & Foerster, LLP, attorneys; Mr. Newmark and Paul H. Frankel, on the brief); for defendant - Julian F. Gorelli (Anne Milgram, Attorney General of New Jersey, attorney).

The court granted the motion filed by the Director, Division of Taxation (hereinafter the "Director") for untimely filing and denied the cross-motion filed General Motors Acceptance Corporation (hereinafter "GMAC") for summary judgment. The court held that GMAC failed to satisfy all the elements of N.J.S.A. 54:49-16(b) and therefore could not claim an offset on its 2000 Corporation Business Tax (hereinafter "CBT"). The court also held that GMAC was not entitled to an offset under the doctrine of equitable recoupment because there were two taxable events, rather than one single transaction.

**LOCAL PROPERTY TAXATION - SERVICE OF COMPLAINT**

Tax Court: Hopatcong Fuel On You, LLC v. Hopatcong Borough, Docket No. 010748-2009; opinion by Bianco, J.T.C., decided February 23, 2010. For plaintiff - William S. Winters (William S. Winters, attorney); for defendant - Lawrence P. Cohen (Courter, Kobert & Cohen, attorney).

The court denied Hopatcong Borough's motion to dismiss the complaint filed by Hopatcong Fuel On You, LLC (hereinafter "HFOY"), for failure to comply with the provisions of N.J.S.A. 54:3-21 and R. 8:4-1(a)(4). The court held that there is no requirement under N.J.S.A. 54:3-21 or R. 8:4-1(a)(4) to file (or serve) a copy of the complaint with the Tax Assessor or Municipal Clerk by April 1. The court also held that Hopatcong failed to show that it suffered any prejudice, other than *de minimis* delay, due to the Tax Assessor's receipt of the copy of the complaint on April 6, or the lack of receipt by the Municipal Clerk.

**STATE INHERITANCE TAX - TIMELINESS OF REFUND CLAIMS**

Tax Court: Estate of Alvina Taylor v. Director, Div. of Taxation, Docket No. 011684-2009; opinion by Narayanan, J.T.C., decided February 24, 2010. For plaintiff - Matthew Wolfberg (Wolfberg & Wolfberg, LLC, attorneys); for defendant - Heather Lynn Anderson, Deputy Attorney General (Anne Milgram, Attorney General of New Jersey, attorney).

The court held that plaintiff's claim for refund of estimated inheritance tax payment, made approximately five years after the date of its payment, was properly denied as untimely by defendant, Director, Division of Taxation, under N.J.S.A. 54:35-10. This statute authorizes refunds of erroneous tax payments only if they were claimed within three years from the date of payment of the taxes. Legislative history supports the Director's denial because it evidences clear legislative intent to include estimated inheritance tax payments within the statute's reach. The Director's regulation, N.J.A.C. 18:26-10.10 (pre-2008 amendment) which stated that overpayments on account do not require a separate refund application, does not and cannot extend the statutory time period. The refund claim was also untimely under the State Tax Uniform Procedure Law which provides four years from the date of payment of the tax to make a refund claim. The court granted the defendant's motion for summary judgment and dismissed the complaint.

CORPORATION BUSINESS TAX - FOREIGN CORPORATION THAT  
REGULARLY AND CONSISTENTLY PERMITS EMPLOYEE TO  
"TELECOMMUTE" BY RECEIVING AND PERFORMING WORK ASSIGNMENTS  
AT HER NEW JERSEY HOME IS "DOING BUSINESS" IN THIS STATE  
AND MUST FILE CORPORATION BUSINESS TAX RETURNS - EMPLOYEE'S  
PERFORMANCE OF WORK ASSIGNMENTS EACH BUSINESS DAY AT NEW  
JERSEY HOME CONSTITUTES SUFFICIENT CONTACT UNDER DUE  
PROCESS CLAUSE AND COMMERCE CLAUSE FOR TAXATION PURPOSES.

Tax Court: Telebright Corporation, Inc. v. Director,  
Division of Taxation; Docket No. 011066-2008; opinion by  
DeAlmeida, P.J.T.C., decided March 24, 2010. For plaintiff  
- Richard J. Bove (Hausch & Bove, attorneys); for defendant  
- Marikae G. Toye (Paula T. Dow, Attorney General of New  
Jersey, attorney).

The court held that Delaware company with offices in  
Maryland is "doing business" in New Jersey under the  
Corporation Business Tax Act by virtue of the fact that the  
company permits an employee to "telecommute" by receiving  
and performing her work assignments each business day at  
her New Jersey home. The court held that application of  
the Corporation Business Tax Act in these circumstances  
does not offend the Due Process Clause or Commerce Clauses  
of the United States Constitution.



**CIGARETTE TAX - SALES AND USE TAX - COMPUTATION OF TAX**

Tax Court; Richard and Lisa Sogness v. Director, Division of Taxation; Docket No. 001361-2009; opinion by Menyuk, J.T.C., decided April 14, 2010. For plaintiff - Richard and Lisa Sogness, (pro se); for defendant - Don E. Catinello (Paula T. Dow, Attorney General of New Jersey, attorney).

Use tax on cigarettes purchased by mail order from an out-of-state unlicensed vendor is properly assessed on the purchase price paid to the vendor and not on the sum of the purchase price plus the cigarette tax.

**LOCAL PROPERTY TAX - FAILURE TO PROSECUTE BEFORE COUNTY BOARD OF TAXATION - TAXPAYER'S TESTIMONY REGARDING RECENT PURCHASE OF RESIDENCE AND CHARACTERISTICS OF PROPERTY SUFFICIENT TO AVOID DISMISSAL FOR FAILURE TO PROSECUTION - COUNTY BOARD OF TAXATION MAY NOT REFUSE TO HEAR TESTIMONY FROM TAXPAYER AND THEREAFTER DISMISS TAXPAYER'S APPEAL FOR FAILURE TO PROSECUTE**

Tax Court: Arnold Lee Austin v. Township of Pemberton; Docket No. 014022-2009; Ana Ramirez v. Township of Pemberton, Docket No. 014024-2009; Sultan Muhammed v. Township of Pemberton, Docket No. 014026-2009; opinion by DeAlmeida, P.J.T.C., decided April 28, 2010. For plaintiffs - William S. Winters; for defendant - Richard H. Rybak (Wisniewski & Associates, LLC, attorneys).

The court held that a county board of taxation may not dismiss a local property tax appeal for lack of prosecution where the taxpayer testifies about the taxpayer's recent purchase and characteristics of the subject property, the taxpayer's residence. Such testimony, while not necessarily sufficient to warrant a reduction in an assessment, constitutes some evidence of true value sufficient to allow taxpayer to file subsequent appeal to Tax Court. The court also held that a county board of taxation may not refuse to permit a residential taxpayer to testify regarding the taxpayer's recent purchase of the subject property and thereafter dismiss the taxpayer's appeal for lack of prosecution.

**LOCAL PROPERTY TAXATION - EXEMPTION**

Tax Court; AHS Hospital Corp. d/b/a/ Morristown Hospital v. Town of Morristown, Docket Nos. 010900-2007, 010901-2007, and 000406-2008; opinion by Bianco, J.T.C., decided May 4, 2010. For plaintiff - Richard L. Plotkin and Christopher John Stracco (Day Pitney LLP, attorneys; Mr. Plotkin, Mr. Stracco and Sarah Elizabeth Cleffi, on the brief); for defendant - Michael J. Caccavelli (DeCotiis, Fitzpatrick, Cole & Wisler, LLP, attorneys; Mr. Caccavelli and Joseph G. Buro, on the brief).

The court found that portions of buildings owned by Morristown Hospital and used as offices and a café were not exempt from local property taxes as hospital purpose properties because the spaces were used by private physicians and other private third parties for profit making purposes. The court also found that there exists a genuine issue of material fact as to whether the use or operation of the remainder of the subject property was conducted for profit.

**LOCAL PROPERTY TAXATION - DEADLINE FOR SERVICE UPON MUNICIPAL CLERK AND ASSESSOR - UNTIMELY FILING**

Tax Court: Sean D. O'Rourke v. Tp. of Fredon, Docket No. 011675-2009, Peter S. DeVita v. Tp. of Fredon, Docket No. 011650-2009, Kevin J. Monahan, v. Tp. of Fredon, Docket No. 011674-2009, Stanley L. Pavlak, Jr. v. Tp. of Fredon, Docket No. 011673-2009, Stanley Pavlak v. Tp. of Fredon, Docket No. 011672-2009, Kevin P. Nannery v. Tp. of Fredon, Docket No. 011670-2009, Rudolf W. Hanz v. Tp. of Fredon, Docket No. 011669-2009, Frederick Geffken v. Tp. of Fredon, Docket No. 011668-2009, Garry S. Hafner v. Tp. of Fredon, Docket No. 011665-2009, Thomas J. Yawit v. Tp. of Fredon, Docket No. 011663-2009, Robert J. Bloemer v. Tp. of Fredon, Docket No. 011662-2009, Kevin Molbury v. Tp. of Fredon, Docket No. 011661-2009, Nicholas C. Scarpa v. Tp. of Fredon, Docket No. 011660-2009, Gene J. Mehl v. Tp. of Fredon, Docket No. 011658-2009, Oliver R. Robling v. Tp. of Fredon, Docket No. 011657-2009, Richard Kleczkowski v. Tp. of Fredon, Docket No. 011655-2009, Linda Warner v. Tp. of Fredon, Docket No. 011654-2009, Frederick Geffken v. Tp. of Fredon, Docket No. 011652-2009, John T. Greed v. Tp. of Fredon, Docket No. 011648-2009, Hans G. Hartmann v. Tp. of Fredon, Docket No. 011647-2009, Jimmy C. Boyd v. Tp. of Fredon, Docket No. 011645-2009, Helen Fletcher v. Tp. of Fredon, Docket No. 011643-2009, Charles Goldman v. Tp. of Fredon, Docket No. 011642-2009, Maurice Passannante v. Tp. of Fredon, Docket No. 011641-2009, Ruth Dibona v. Tp. of Fredon, Docket No. 011640-2009, Aaron Raabe v. Tp. of Fredon, Docket No. 011639-2009, opinion by Bianco, J.T.C., decided June 9, 2010; revised June 10, 2010. For plaintiff - William S. Winters (William S. Winters, attorney); for defendant - William E. Hinkes (Hollander, Strelzik, Pasculli, Hinkes, Vandenberg, & Hontz, LLC, attorney); for Sussex County Board of Taxation - Julian F. Gorelli (Paula T. Dow, Attorney General of New Jersey, attorney).

The Tax Court denied the Township of Fredon's motion to dismiss twenty-six separate complaints filed by various plaintiffs for failure to comply with the provisions of N.J.S.A. 54:3-21, N.J.A.C. 18:12A-1.6(j), and the rules and regulations of the Sussex County Board of Taxation. The court held that neither N.J.S.A. 54:3-21 nor N.J.A.C. 18:12A-1.6(j) imposes a strict April 1 deadline for service of a petition of appeal upon the Tax Assessor or Municipal Clerk; to hold otherwise would in effect require the court to add language to N.J.S.A. 54:3-21 and N.J.A.C. 18:12A-1.6(j). The court found that the County Board overstepped its authority when it promulgated its own rule that requires an April 1 postmark deadline for service upon the Municipal Clerk and Tax Assessor.

**STATE TAXATION - PROPER PARTY TO SEEK REFUND**

TAX COURT: RCN Telecom Services, Inc., f/k/a Freedom New York, LLC, v. Director, Division of Taxation, Docket No: 000161-2007; opinion by Bianco, J.T.C., decided June 14, 2010. For plaintiff - Sean M. Lipsky (Cole, Schotz, Meisel, Forman & Leonard, P.A., attorneys; Jeffrey H. Schechter and Damian L. Albergo, of counsel; Mr. Schechter, Mr. Lipsky and Mr. Albergo, on the brief); for defendant - Marlene G. Brown (Paula T. Dow, Attorney General of New Jersey, attorney).

The Tax Court granted partial summary judgment to plaintiff, RCN Telecom Service, Inc., finding that RCN Telecom is a proper party to seek a refund pursuant to N.J.S.A. 54:32B-8.13(c) even though a related entity, RCN Operating Services Inc. actually made payments to various vendors on RCN Telecom's behalf. The court further found, however, that there was a genuine issue of material fact as the primary function or use of the machine, equipment or apparatus which will require a hearing and offering of evidence.

**CERTIFICATE OF DEBT - SALES AND USE TAX - RULE 4:50-1 DOES NOT CREATE JURISDICTION IN THE TAX COURT TO ENTERTAIN MOTION TO VACATE CERTIFICATE OF DEBT**

Tax Court: Millwork Installation, Inc. t/a Midwest Installation v. State; Docket No. 016329-2009; opinion by DeAlmeida, P.J.T.C., decided July 16, 2010. For plaintiff - Jeanine D. Clark (Margolis Edelstein, attorneys); for defendant - Michael J. Duffy, Deputy Attorney General (Paula T. Dow, Attorney General of New Jersey, attorney).

The court held that R. 4:50-1 does not create jurisdiction in the Tax Court to entertain motion to vacate Certificate of Debt issued by the Director, Division of Taxation after 90-day appeal period for challenging underlying assessment of sales and use tax. The court reasoned that a Certificate of Debt is not a judgment within the meaning of R. 4:50-1 and that the rule could not be interpreted to expand the statutorily defined jurisdiction of the court, which requires that actions of the Director assessing sales and use tax be filed with the Tax Court within ninety days of the action challenged.

**LOCAL PROPERTY TAX - RELAXATION OF TAX PAYMENT OBLIGATION  
DURING PENDENCY OF APPEAL OF ASSESSMENT**

Tax Court: Sun Pipe Line Co. v. Township of West Deptford;  
Docket No. 011284-2010; Sunoco, Inc. (R&M) v. Township of  
West Deptford; Docket No. 007238-2010; Sunoco, Inc. (R&M),  
v. Township of West Deptford; Docket No. 007113-2010;  
Sunoco Pipeline, LP v. Township of West Deptford; Docket  
No. 011286-2010; opinion by DeAlmeida, P.J.T.C., decided  
July 23, 2010. For plaintiffs - Jeffrey D. Gordon (Archer  
& Greiner, P.C., attorneys; A. Paul Genato, on the briefs);  
for defendant - John R. Lloyd (Nowell, Amoroso, Klein,  
Bierman, P.A., attorneys).

The court held that N.J.S.A. 54:3-27 and N.J.S.A. 54:51A-1  
do not authorize the court to reduce a taxpayer's ongoing  
tax payment obligation on property the assessment on which  
is subject to appeal where all taxes and municipal charges  
on said property were paid as required by the statutes at  
the time that complaints were filed with the court.

**REVALUATION - LOCAL PROPERTY TAXATION - N.J.A.C. 18:12A-1.14(b)**

Tax Court; Keane et al. v. Township of Monroe, Middlesex County Board of Taxation, and Director, Division of Taxation; Docket No. 001147-2007; opinion by Menyuk, J.T.C., decided October 25, 2010. For plaintiffs - Jeffrey D. Gordon (Archer & Greiner, P.C., attorneys); for defendants - Mayor, Council and Tax Assessor of Monroe Township - Richard A. Rafanello (Shain, Schaffer & Rafanello, P.C., attorneys); for defendant - Middlesex County Board of Taxation - Julia F. Moore (Paula T. Dow, Attorney General of New Jersey, attorney); for defendant - Director, Division of Taxation - Marlene G. Brown (Paula T. Dow, Attorney General of New Jersey, attorney).

Following the county board of taxation's refusal to act, the court granted the summary judgment motion of the plaintiff taxpayers and ordered the municipality to conduct a complete revaluation of real property in Monroe Township. The court concluded that several criteria indicating a need for revaluation as set forth in N.J.A.C. 18:12A-1.14(b) had been met.



**SALES AND USE TAX - EXEMPTION FOR RECEIPTS FROM THE SALES OF ADVERTISING TO BE PUBLISHED IN A NEWSPAPER.**

Tax Court: ADVO, Inc. v. Director, Division of Taxation; Docket No. 000131-2008; opinion by DeAlmeida, P.J.T.C., decided October 28, 2010. For plaintiff - Susan A. Feeney (McCarter & English, LLP, attorneys; Open Weaver Banks on the brief); for defendant - Julia F. Moore (Paula T. Dow, Attorney General of New Jersey, attorney)

The court held that plaintiff's weekly publication, Shop Wise ®, constituted a newspaper within the meaning of N.J.S.A. 54:32B-8.30 and N.J.A.C. 18:24-1.2 (2007) during the period at issue. Revenue from the sale of advertising to appear in Shop Wise ® during that period was, therefore, exempt from sales tax. The Director, Division of Taxation is bound by the criteria set forth in N.J.A.C. 18:24-1.2 (2007) as it existed during the relevant period, even though the Director later promulgated a regulation establishing a more restrictive interpretation of the statute.

**LOCAL PROPERTY TAX - SQUARE CORNERS DOCTRINE - RESCISION OF FIVE-YEAR EXEMPTION AND ABATEMENT.**

Tax Court: Lowe's Home Centers, Inc. v. City of Millville; Docket No. 010784-2007, Docket No. 007236-2008; opinion by DeAlmeida, P.J.T.C., decided November 29, 2010. For plaintiff - Bruce J. Stavitsky (Stavitsky & Associates, LLC, attorneys; Laura M. Jacque, on the briefs); for defendant - Richard C. McCarthy, Millville City Attorney.

The court rejected the municipality's attempt to rescind a five-year exemption and abatement granted to plaintiff pursuant to the Five-Year Exemption and Abatement Law, N.J.S.A. 40A:21-1, et seq. for a retail store constructed in an area in need of rehabilitation. The court held that the municipality's former tax assessor and governing body failed to turn square corners with plaintiff by misidentifying a crucial application deadline for the exemption and abatement, mailing the exemption and abatement application to an incorrect address, approving the exemption and abatement despite its arguably late submission occasioned by the misstatement and incorrect mailing, ratifying the exemption and abatement through a governing body resolution, and subsequently rescinding the exemption and abatement two and a half years after it was originally granted. The court restored the exemption and abatement.

**STATE SALES TAX - DECLARATORY RELIEF**

Tax Court: Labor Ready Northeast Inc. v. Director, Div. of Taxation, Docket No. 000359-2010; opinion by Narayanan, J.T.C., decided January 4, 2011. For plaintiff - Peter L. Faber and Leah Robinson (McDermott, Will & Emery, L.L.P., attorney); for defendant - Marlene G. Brown, Senior Deputy Attorney General (Paula Dow, Attorney General of New Jersey, attorney).

Held: plaintiff is entitled to maintain a claim for declaratory relief from the defendant's letter that plaintiff's business activities of providing workers to perform taxable services is generally subject to sales tax. The letter, authored by the defendant's Deputy Director, and copied to its Assistant Director in charge of Field Audit, was sent only to plaintiff based upon defendant's review of plaintiff's business documents provided in a prior litigation, and thus creates a bona fide controversy between adverse parties. The court is being asked to determine whether the Sales Tax statute includes within its scope and intent, the service of providing workers, which is a non-enumerated, thus, non-taxable service, an exercise clearly permitted by N.J.S.A. 2A:16-52, the Uniform Declaratory Judgments Act. The issue of whether plaintiff's activities are subject to sales tax is a mixed question of law and fact which requires a full factual development and understanding of plaintiff's business activities. Therefore, the parties' motions for summary judgment are denied.

(13 Pages)

## STATE GROSS INCOME TAX

Tax Court: Daniel Schulmann et al., v. Director, Div. of Taxation, Docket No. 007221-2005; opinion by Narayanan, J.T.C., decided November 9, 2010, released January 6, 2011. For plaintiff - James L. Esposito (DeCotis, FitzPatrick & Cole, LLP, attorney); for defendant - Ramanjit K. Chawla (Paula Dow, Attorney General of New Jersey, attorney).

Held: deduction of commissions paid to various karate school instructors/owners by plaintiff Daniel Schulmann on his personal New Jersey gross income tax returns for tax years 2000 through 2002 was properly disallowed by defendant. Various karate schools, all imparting the Tiger Schulmann Karate Method, were created as corporate entities, co-owned by the karate instructors and Mr. Schulmann. As an incentive, Mr. Schulmann offered the instructor/owner up to 20% commissions when a student trained by such instructor/owner started one or more Tiger Schulmann karate schools. Commissions were based on the income earned by UAK Management Co. Inc., a management company owned 100% by Mr. Schulmann, payable by the corporate karate schools and in later years by the franchisor of the Tiger Schulmann Karate Method, TSK Franchise Systems Inc. Commissions were however paid from Mr. Schulmann's share of net income/profits derived from the various karate schools and deposited in a separate account titled "Danny Schulmann/UAK." They were deducted on Mr. Schulmann's personal gross income tax returns, and offset his pro rata share of S corporation income from the various karate schools. Having chosen the corporate form to do business, and the corporations having undertaken to pay commissions, the commissions are corporate obligations which are not deductible by Mr. Schulmann individually. Nor could they be deducted as business expenses under N.J.S.A. 54A:5-1(b) since inter-category netting is prohibited, and further since it would require reclassification of Mr. Schulmann's share of S corporation income to business income just for purposes of taking the deduction.

(18 Pages)

**CORPORATION BUSINESS TAX - ENTIRE NET INCOME FOR  
CORPORATION BUSINESS TAX PURPOSES DOES NOT INCLUDE  
EXTRATERRITORIAL INCOME EXCLUDED FROM FEDERAL TAXABLE  
INCOME UNDER I.R.C. §114(a)**

Tax Court: International Business Machines Corporation v. Director, Division of Taxation; Docket No. 011630-2008; Crestron Electronics, Inc. v. Director, Division of Taxation, Docket No. 011795-2009, opinion by DeAlmeida, P.J.T.C., decided January 26, 2011. For plaintiff International Business Machines Corporation - Peter L. Faber and Leah Samit Robinson (McDermott Will & Emery, LLP,); for plaintiff Crestron Electronics, Inc. - Paul H. Frankel and Mitchell A. Newmark (Morrison & Foerster, LLP, attorneys); for defendant - Marlene G. Brown and Michael J. Duffy (Paula T. Dow, Attorney General of New Jersey, attorney).

The court held the Director, Division of Taxation exceeded his statutory authority when he included in the taxpayers' entire net income for corporation business tax ("CBT") purposes extraterritorial income excluded from federal taxable income under I.R.C. §114(a). Entire net income, as defined by N.J.S.A. 54:10A-4(k) is coupled with federal taxable income, subject to specific exclusions provided in N.J.S.A. 54:10A-4(k)(2)(A) through (J). During the period at issue federal law excluded extraterritorial income from federal taxable income. Because N.J.S.A. 54:10A-4(k) did not contain an exception to the federal law, extraterritorial income was also excluded from entire net income for corporation business tax purposes. The Director's regulation suggesting to the contrary is invalid to the extent it can be interpreted to require extraterritorial income to be added back to entire net income under the CBT Act.

(15 Pages)

**LOCAL PROPERTY TAX - DIRECTOR'S EQUALIZATION TABLE, SCHOOL AID, AND COUNTY BOARDS OF TAXATION - CHALLENGES TO DIRECTOR'S EQUALIZATION TABLE - CHALLENGES TO APPORTIONMENT OF COUNTY GOVERNMENT COSTS**

Tax Court; Township of Jefferson, et. al v. Director, Division of Taxation; Docket No. 020479-2010; Township of Mendham, et. al v. Director, Division of Taxation; Docket No. 020683-2010; Borough of Mendham, et. al v. Director, Division of Taxation; Docket No. 019458-2010; Township of Mount Olive, et. al v. Director, Division of Taxation; Docket No. 019450-2010; opinion by Bianco, J.T.C., decided January 28, 2011 (revised February 08, 2011). For plaintiff Township of Jefferson - Lawrence P. Cohen (Courter, Kobert & Cohen, attorneys; Richard W. Wenner, on the brief); for plaintiff Township of Mendham - Thomas J. Sateary (Lindabury McCormick Estabrook & Cooper, attorneys); for plaintiffs Township of Mendham and Borough of Mendham - Fred Semrau (Dorsey & Semrau, attorneys); for defendants Director, Division of Taxation, Department of Treasury and Morris County Board of Taxation - Julian F. Gorelli and Julia F. Moore (Paula T. Dow, Attorney General of New Jersey, attorney).

The Tax Court rejected four municipalities' challenge to the Director's Equalization Table since the municipalities failed to demonstrate that the Director's methodology in promulgating the Equalization Table could not be reasonably justified. As a matter of law, the Tax Court found that there is no merit to the allegation that a municipality's equalized true value for the computation year is equivalent to 100% market value, even in years of revaluation or reassessment.

The court further rejected the municipalities' contention that the Director's use of averaging for the computation year is constitutional when it results in an equalized true value greater than average true value, but is unconstitutional when it results in the inverse. To hold otherwise would mean that municipalities with current year equalized true values lower than those of the previous year, would be subject to averaging while municipalities with increased equalized true values would not be.

Additionally, the court dismissed the municipalities' challenge of the Morris County Board of Taxation's apportionment of county government costs as premature since

the county board of taxation's equalization table has not yet been promulgated.

(19 Pages)

#1192

**LOCAL PROPERTY TAX - CHAPTER 91 - RULE 8:7 - STATUTORY  
CONSTRUCTION - RELAXATION OF THE RULES**

Tax Court; Town of Phillipsburg v. ME Realty, LLC; Docket No. 012362-2010; opinion by Bianco, J.T.C., decided April 8, 2011. For plaintiff Town of Phillipsburg - Robert B. McBriar (Courter, Kobert & Cohen; attorneys); for defendant ME Realty, LLC - Steven R. Irwin (The Irwin Law Firm, P.A., attorneys; Kevin S. Englert, on the brief).

The Tax Court, Bianco, denied Phillipsburg's motion to dismiss ME Realty's counterclaim for failure to respond to Phillipsburg's N.J.S.A. 54:4-34 ("Chapter 91") request, since the request seeking income information for "tax year ending December 2008/2009", was found to be ambiguous and open to multiple interpretations. In the alternative, the court found that Phillipsburg's motion was untimely since the 180-day time period in which to bring such motion pursuant to R. 8:7(e), ran from the filing of the complaint *and not* the counterclaim.

(15 Pages)



**ESTATE TAX - RETROACTIVITY OF TAX STATUTES - CONSTITUTIONAL CHALLENGES -EQUAL PROTECTION -DUE PROCESS - DOCTRINE OF MANIFEST INJUSTICE**

Tax Court; Estate of Stanley Kosakowski v. Director, Division of Taxation; Docket No. 004620-2005; opinion by Bianco, J.T.C., decided April 11, 2011. For plaintiff Estate of Stanley Kosakowski - Richard B. Nashel (Nashel & Nashel; attorneys); for defendant Director, Division of Taxation - Heather Lynn Anderson (Paula T. Dow, Attorney General of New Jersey; attorneys).

The Tax Court, Bianco, granted summary judgment in favor of the Director and denied the Estate's cross-motion for summary judgment finding that the retroactive application of the amendment to N.J.S.A. 54:38-1 violated neither state nor federal equal protection principles, since the different treatment of decedents dying between January 1 and June 30 of 2002 and those dying thereafter was justified by the Legislature's goal of preventing revenue loss. Likewise, the court held that N.J.S.A. 54:38-1 did not violate federal due process since it was justified by a rational legislative purpose. Further, the court, relying on prior precedential case law, found that state due process was not violated. Additionally, the court refused to apply the doctrine of manifest injustice to the Estate, finding that the decedent did not rely, to his detriment, on the prior law when he executed his will.

(17 Pages)

**STATE INHERITANCE TAX - ALLOWABLE DEDUCTIONS**

Tax Court: Daniel Sicardi, Executor of The Estate of Charlotte Geer v. Director, Div. of Taxation, Docket No. 000599-2010; opinion by Narayanan, J.T.C., decided April 27, 2011. For plaintiff - Daniel Sicardi, (Self-Represented); for defendant - Heather Lynn Anderson (Paula T. Dow, Attorney General of New Jersey, attorney).

Held: Defendant properly denied plaintiff's claim for deduction of attorney fees because they were incurred by plaintiff individually in connection with a litigation involving the probate of the decedent's will and not in his capacity as an executor as required by N.J.S.A. 54:34-5(c). The defendant also correctly applied N.J.A.C. 18:26-7.10(c) in disallowing plaintiff a deduction for executor's commissions upon the bank accounts which plaintiff held jointly with the decedent. To the extent such bank accounts were received and controlled by the court-appointed temporary administrator, the probate court's award of commissions to the administrator had been allowed as a deduction by the defendant. To the extent the amount awarded to the court-appointed administrator was deemed to be towards her legal fees, the defendant's disallowance of commissions to plaintiff on the joint bank accounts was correct because plaintiff was not an executor or fiduciary during the court-appointed administrator's appointment. To the extent a portion of the bank accounts were frozen subject to the receipt of inheritance tax waivers, and thus, could be deemed as not received by nor under the control of the court-appointed administrator, the defendant's disallowance of commissions to plaintiff was still proper because plaintiff explicitly agreed to take back ownership of the bank accounts in his capacity as a sole surviving joint bank account holder, and not as a fiduciary. Defendant's motion for summary judgment is granted and the complaint is dismissed.

(19 Pages)

## LOCAL PROPERTY TAX - VALUATION - METHODOLOGY

Tax Court: Lesley Greenblatt v. Englewood City; Docket No. 015575-2009; opinion by Andresini, J.T.C., decided December 13, 2010; Released - May 6, 2011. For plaintiff - Charles J. Kleiner; for defendant - William J. Bailey (Huntington Bailey LLP, attorney).

Plaintiff challenged the 2009 assessment on his residence located in the City of Englewood (Defendant). Both plaintiff and defendant called appraisers as expert witnesses at trial. Each expert relied on the market approach (using comparable sales) to arrive at his respective conclusion of value.

The Tax Court, Andresini, J.T.C., held that:

- (1) Neither expert sufficiently explained the methodology and assumptions used in making adjustments to the comparable properties.
- (2) Without such information, the court must reject the market approach methodology as presented by each party.
- (3) Because the record is void of sufficient and competent evidence, the court is unable to assign a market value to the subject property.

Complaint dismissed.

**LOCAL PROPERTY TAX - FARMLAND ASSESSMENT - DOMINANT USE - TAXPAYER'S OPERATION OF 290-FOOT HIGH CELLULAR COMMUNICATIONS TOWER IS A NON-AGRICULTURAL USE THAT DOMINATES OVER BEEKEEPING ACTIVITY AT THE SUBJECT PROPERTY**

Tax Court: Atlantic Coast LEH, LLC v. Township of Little Egg Harbor; Docket No. 007723-2006, Docket No. 007933-2007, Docket No. 008904-2008, Docket No. 013849-2009, opinion by DeAlmeida, P.J.T.C., decided July 26, 2011. For plaintiff - Frederick C. Raffetto (Ansell, Grimm & Aaron, P.C., attorneys); for defendant - Michael J. Gilmore (Gilmore & Monahan, P.A., attorneys).

The court held that taxpayer's operation of 290-foot high cellular communications tower dominated over apiary activity on the subject property during the tax years at issue, rendering farmland assessment inapplicable.

(17 Pages)

LOCAL PROPERTY TAX - CHAPTER 91 - TAX ASSESSOR NEED NOT EXPLAIN IN REQUEST TO TAXPAYER FOR INCOME AND EXPENSE INFORMATION PURSUANT TO N.J.S.A. 54:4-34 THE CONSEQUENCES OF FAILURE TO RESPOND IN A TIMELY FASHION - DICTUM TO THE CONTRARY IN PRIOR CASES REJECTED - EQUITABLE RELIEF UNDER THE SQUARE CORNERS DOCTRINE NOT WARRANTED WHERE ASSESSOR'S INCOME AND EXPENSE INFORMATION REQUEST CONTAINED ACCURATE STATEMENT THAT FAILURE TO COMPLY MAY RESULT IN DISMISSAL OF SUBSEQUENTLY FILED CHALLENGE TO ASSESSMENT

Tax Court: James-Dale Enterprises, Inc. v. Township of Berkeley Heights; Docket No. 004384-2010, opinion by DeAlmeida, P.J.T.C., decided July 25, 2011. For plaintiff - Nathan P. Wolf, (Law Office of Nathan P. Wolf, LLC, attorney); for defendant - Martin Allen, (DiFrancesco, Bateman, Coley, Yospin, Kunzman, Davis & Lehrer, P.C., attorneys, C. Justin McCarthy, Esq., on the briefs).

The court held that in a request to a taxpayer for income and expense information pursuant to N.J.S.A. 54:4-34, commonly known as Chapter 91, the tax assessor need not explain the consequences of failure to respond in a timely fashion. The court declined to follow dictum to the contrary in Southland Corp. v. Township of Dover, 21 N.J. Tax 573, 578 (Tax 2004), which was repeated in Thirty Mazel, LLC v. City of East Orange, 24 N.J. Tax 357, 362 (Tax 2009). The assessor's request in this case, which informed the taxpayer that failure to respond to the request in a timely fashion "may" result in dismissal of subsequently filed challenge to assessment was accurate and not misleading. Equitable relief under the square corners doctrine is not, therefore, warranted.

(12 Pages)

**LOCAL PROPERTY TAX - EQUALIZED TRUE VALUE - AVERAGE RATIOS  
- COUNTY EQUALIZATION TABLE**

Tax Court: Twp. of Jefferson v. Morris Cty. Bd. Of Taxation; Docket No. 001746-2011, opinion by Bianco, J.T.C., decided September 8, 2011. For plaintiff - Lawrence P. Cohen (Courter, Kobert & Cohen, attorneys); for defendant - Julian F. Gorelli (Paula T. Dow, Attorney General of New Jersey, attorneys).

The Tax Court rejected the municipality's challenge to the Morris County Board of Taxation's Equalization Table since the municipality failed to demonstrate that it bore a dramatically or substantially excessive share of the county tax burden. The Tax Court found that there is no merit to the municipality's claim that equalized true value is equivalent to 100% market value. The court rejected the municipality's contention that N.J.S.A. 54:4-2.25 and -2.26 prohibit the Board from calculating average ratios by using an average true value that exceeds the equalized true value. Additionally, the court rejected the municipality's arguments that the County Equalization Table violates the Uniformity Clause of the New Jersey Constitution and N.J.S.A. 54:4-2.25 to -2.26.

(Pages 10)

**LOCAL PROPERTY TAXATION - PROPERTY TAX EXEMPTION**

Tax Court; The Community League, Inc., d/b/a The League v. City of Newark; Docket No. 019896-2010, opinion by Nugent, J.T.C., decided September 30, 2011. For plaintiff - Charles I. Auffant (Rutgers School of Law - Newark Community Law Clinic, attorney); for defendant - Romal D. Bullock (Nowell Amoroso Klein Bierman, P.A., attorneys).

Property exempt in accordance with N.J.S.A. 54:4-3.6 under prior owner was transferred mid-year to plaintiff, another tax-exempt entity. Defendant granted exemption as of the following January 1 but denied exemption for the tax year of transfer pursuant to N.J.S.A. 54:4-3.6b because plaintiff did not own other exempt property. The court concluded that N.J.S.A. 54:4-3.6b recognizes the continuation of a property tax exemption upon the transfer of property from one qualified tax-exempt owner to another without requiring that the purchaser own other exempt property at the time of the transfer. The statute is intended to permit the exemption to continue uninterrupted when the transfer among tax-exempt entities occurs after October 1 of the pre-tax year in the event that all other requirements for exemption have been met.

(11 Pages)

**LOCAL PROPERTY TAXATION - FAILURE TO APPEAL ADDED  
ASSESSMENT - APPLICATION OF FREEZE ACT (N.J.S.A. 54:51A-8)**

Tax Court; Fifth Roc Jersey Associates, L.L.C. v. Town of Morristown; Docket No. 003062-2007, opinion by Bianco, J.T.C., decided December 7, 2011. For plaintiff - Carl G. Weisenfeld and Nicholas F. Pellitta (Norris McLaughlin & Marcus, P.A., attorneys); for defendant - Christopher C. Martin (Morrison Mahoney, L.L.P., attorneys; Owen T. Weaver, on the brief).

The court granted Fifth Roc Jersey Associates, L.L.C.'s ("Fifth Roc") motion to invalidate its 2009 added assessment through an application of N.J.S.A. 54:51A-8 ("the Freeze Act") and compel a refund from defendant, Town of Morristown ("Morristown"), for the overpayment of taxes on its 2009 regular assessment. The Tax Court found that although Fifth Roc did not appeal its 2009 added assessment (i.e. as provided by N.J.S.A. 54:4-63.11), the court can reach the validity of its added assessment through a Freeze Act application. The court rejected Morristown's contention that Fifth Roc's failure to appeal its 2009 added assessment deprived the Tax Court of jurisdiction. Additionally, the court found that the Doctrine of Laches and Entire Controversy Doctrine did not bar the motion.

(18 Pages)



**LOCAL PROPERTY TAXATION - PROPERTY TAX EXEMPTION -  
APPLICATION OF N.J.S.A. 54:4-3.6**

Tax Court; Phillipsburg Riverview Organization, Inc. v. Town of Phillipsburg; Docket No. 015615-2010, opinion by Bianco, J.T.C., decided December 16, 2011. For plaintiff - Daniel E. Somers (Daniel E. Somers; attorney); for defendant - Lawrence P. Cohen and Katrina L. Campbell (Courter, Kobert & Cohen; attorneys; Mr. Cohen and Ms. Campbell on the brief).

On appeal from the judgment of the Warren County Board of Taxation, the Tax Court denied in part and granted in part a property tax exemption pursuant to N.J.S.A. 54:4-3.6 to plaintiff, Phillipsburg Riverview Organization, Inc. (PRO). The Court found that only a small portion of the subject property satisfied the three criteria for property tax exemption under the test set forth in Paper Mill Playhouse v. Millburn Township, 95 N.J. 503, 506 (1984) and therefore was entitled only to a partial exemption. The vast majority of the property did not qualify since PRO had failed to demonstrate that the use thereof was not conducted for profit.

(18 Pages)

Summaries from this point are listed in reverse order - highest approved number to lowest.

**LOCAL PROPERTY TAX - RIGHT OF LANDOWNER TO INTERVENE IN TENANT'S APPEAL OF LOCAL PROPERTY TAX ASSESSMENT - APPLICATION OF VILLAGE SUPERMARKETS FACTORS - LANDOWNER'S INTEREST IN CHALLENGING ASSESSMENT PREDOMINATES OVER TENANT'S INTEREST - LANDOWNER ENTITLED TO CONTROL DISPOSITION OF TAX APPEALS THROUGH SETTLEMENT WITH MUNICIPALITY**

Tax Court: Target Corp. v. Township of Toms River; Docket Nos. 007812-2009, 008303-2010; SDD, Inc. v. Township of Toms River, Docket Nos. 003880-2009, 007052-2010, opinion by DeAlmeida, P.J.T.C., decided November 29, 2012, released for publication January 14, 2013. For plaintiff Target Corp. and proposed intervenor Lowe's Home Centers, Inc., Maria H. Yoo, Esq. (Stavitsky & Associates, LLC, attorneys); for plaintiff SDD, Inc., Paul Tannenbaum, Esq., (Zipp & Tannenbaum, LLC, attorneys); for defendant Township of Toms River, Kenneth B. Fitzsimmons, Township Attorney.

The court held landowner's interest in appeals of tax year 2009 and 2010 assessments on multi-tenant, commercial property predominated over interest of single tenant who filed parallel appeals. Although tenant was responsible for the payment of taxes on the portion of the property it leased, its contractual right to challenge the assessments was not exclusive and landowner, who was represented by competent counsel, had access to all necessary records, and who secured settlement significantly reducing the assessments for the relevant tax years, was entitled to control appeals. Landowner's motion to intervene in tenant's appeals for purpose of seeking dismissal of tenant's appeals granted. Motion of second tenant to intervene in first tenant's appeals dismissed as moot. Judgment entered in accordance with landowner's settlement of its appeals.

(12 Pages)

**Dismissal for Lack of Prosecution - APPLICATION OF N.J.S.A. 54:51A-1c(2)**

Tax Court; Norman Schaefer v. Borough of Chatham; Docket No. 012915-2012; John K. Fauver Jr. et al v. Borough of Chatham; Docket No. 012912-2012, opinion by Bianco, J.T.C., decided December 7, 2012, amplified opinion released January 3, 2013. For plaintiffs - Richard Kostovski (Thomas L. Murphy, attorney; Mr. Kostovski, on the brief); for defendant - Levi J. Kool (O'Donnell McCord P.C., attorney; Mr. Kool, on the brief).

The Tax Court denied defendant's motions to dismiss plaintiffs' complaints for lack of jurisdiction despite the dismissals of plaintiffs' appeals for lack of prosecution by the Morris County Board Taxation. The court found that the Board's dismissals were wholly improper given that plaintiffs' attorney and appraisal experts appeared at the scheduled Board hearings and were prepared to proceed. The court determined that the Board's barring of the appraisal reports and testimony of plaintiffs' experts due to boilerplate language contained in the reports that indicated they were prepared for a purpose other than tax appeals, effectively precluded plaintiffs from satisfying the evidentiary standard needed to avoid a dismissal for lack of prosecution under N.J.S.A. 54:51A-1c (2).

(6 Pages)

**SALES AND USE TAX - URBAN ENTERPRISE ZONE ACT - REDUCED  
RATE OF SALES TAX - N.J.S.A. 52:27H-80 - SALES ORIGINATED  
AND COMPLETED WITHIN THE ZONE**

Tax Court, NFF Construction, Inc. v. Director, Division of Taxation, Docket No. 011330-2009; opinion by Menyuk, J.T.C., decided December 26, 2012. For plaintiff - William J. Hughes, Jr. and Mark A. Fiore (Cooper, Levenson, April, Niedelman & Wagenheim, P.A., attorneys); for defendant - David Bender (Jeffrey S. Chiesa, Attorney General of New Jersey, attorney).

Plaintiff contested the denial of its claim for a refund of sales taxes that had been assessed against it on the ground that plaintiff should have collected tax at the full rate on the sales transactions at issue because the transactions were not eligible for the reduced rate of tax on receipts permitted by N.J.S.A. 52:27H-80. The court found that there was no credible evidence that the transactions had taken place entirely within the urban enterprise zone as required by defendant's regulations, and affirmed the denial of the refund claim.

(18 Pages)

**Gross Income Tax - Undistributed Income of Testamentary Trust; S Corporation Income - APPLICATION OF N.J.S.A. 54A:5-3; 54A:5-10**

Tax Court; Residuary Trust A u/w/o Fred E. Kassner, Michele Kassner, Trustee v. Director, Division of Taxation; Docket No. 000364-2010, opinion by Bianco, J.T.C., decided January 3, 2013. For plaintiff - John L. Berger (Lowenstein Sandler P.C., attorney; Mr. Berger, on the brief); for defendant - Ramanjit K. Chawla (Jeffrey S. Chiesa, Attorney General of New Jersey, attorney; Ms. Chawla, on the brief)

On cross-motions for summary judgment the Tax Court granted plaintiff's motion for summary judgment and denied defendant's motion for summary judgment finding that the plaintiff was not required to pay taxes on the undistributed out of state income of a testamentary trust earned through the trust's passive ownership of stock in S Corporations conducting business in New Jersey. Since the Trust was administered out of state by a non-resident trustee and the court determined that the trust owned no assets in New Jersey, the court followed the precedent set forth in Pennoyer v. Taxation Div. Dir., 5 N.J. Tax 386 (Tax 1983) and Potter v. Taxation Div. Dir., 5 N.J. Tax 399 (Tax 1983) finding that the Director failed to overcome the due process threshold needed to constitutionally subject the trust to taxation on out of state income.

(11 Pages)

**LOCAL PROPERTY TAX - COUNTY BOARD JUDGMENT - CHAPTER 123 -  
N.J.S.A. 54:1-35a - N.J.S.A. 54:3-22**

Tax Court: North Brunswick Twp. v. Gochal, Gary and Nancy; Docket No. 012165-2012, opinion by Menyuk, J.T.C., decided December 10, 2012. For plaintiff - Harry Haushalter; for defendants - Gary and Nancy Gochal, pro se.

Plaintiff appealed from the judgment of the Middlesex County Board of Taxation. The court granted plaintiff's motion to vacate the Board's judgment and restore the original assessment where the Board's judgment evidenced a true value for the subject property such that the ratio of the assessment to its true value fell within the common level range.

(6 Pages)

**EXEMPTION OF PROPERTY OF NONPROFIT ORGANIZATION - ACTUAL AND DOMINANT USE - TAXPAYER'S CHRISTIAN RETREAT HOUSE IS USED FOR ITS STATED CHARITABLE AND RELIGIOUS PURPOSES AND THE PROPERTY IS REASONABLY NECESSARY TO EFFECTUATE THE PURPOSE OF THE NONPROFIT ORGANIZATION**

Tax Court: Girls Friendly Society of Pennsylvania v. City of Cape May and Cape May County Board of Taxation; Docket No. 009803-2011; opinion by Brennan, J.T.C., decided October 26, 2012. For plaintiff - Louis C. Dwyer, Jr.; for defendant - Andrew Catanese (Monzo Catanese, PC, attorneys).

The court held that taxpayer's use of a Christian retreat house was reasonably necessary to achieve the charitable and religious purposes of the organization and that the actual and dominant use of the property was by and for the benefit of the young female members. Occasional simultaneous use of portions of the property by restricted individuals and entities for a fee does not destroy the exemption.

(25 pages)

**CORPORATE BUSINESS TAXATION - REFUNDS - APPLICATION OF  
N.J.S.A. 54:10A-15.7; 54:10A-15.11**

Tax Court; BIS LP, Inc. v. Director, Division of Taxation; Docket No. 007847-2007, opinion by Bianco, J.T.C., decided October 25, 2012. For plaintiff - Michael James Guerriero (Day Pitney LLP, attorneys; Brian W. Disler, on the brief); for defendant - Marlene G. Brown for Director, Division of Taxation (Jeffrey S. Chiesa, Attorney General of New Jersey, attorney; Ms. Brown, on the brief).

On remand *de novo* from the judgment of the Appellate Division, the Tax Court granted plaintiff's motion for summary judgment and denied defendant's motion for summary judgment finding that the plaintiff is entitled to receive the \$1,480,524 tax refund plus interest for fiscal year 2003 previously ordered by the Tax Court. The court found that pursuant to N.J.A.C. 18:7-17.6, BIS LP was the proper entity to receive the refunds even though payments were originally remitted to the state by a third party. Defendant's reliance on N.J.S.A. 54:10A-15.7 and 54:10A-15.11 to deny BIS LP the refund ignored the clear language of N.J.A.C. 18:7-17.6 which is the controlling authority on the issue presented to the court.

(11 Pages)



DISABLED VETERAN EXEMPTION - 100% PERMANENT DISABILITIES FROM EXPOSURE TO ENEMY CHEMICAL AGENTS DURING OPERATION NORTHERN WATCH/SOUTHERN MATCH QUALIFY FOR EXEMPTION - THEATER OF OPERATION OF OPERATION NORTHERN WATCH/SOUTHERN WATCH NOT LIMITED TO ARABIAN PENINSULA AND PERSIAN GULF - DIRECT CONTACT IN THE UNITED STATES WITH ENEMY CHEMICAL WEAPONS REMOVED FROM BATTLEFIELD IN IRAQ SUFFICIENT TO CONSTITUTE ACTIVE SERVICE IN TIME OF WAR - VETERAN'S FAILURE TO FILE WRITTEN CLAIM FOR EXEMPTION WITH MUNICIPAL TAX ASSESSOR DOES NOT VITIATE EXEMPTION - REGULATION DECLARING DISABLED VETERAN INELIGIBLE FOR EXEMPTION IF HE OR SHE OWNS DWELLING AS JOINT TENANTS WITH SOMEONE OTHER THAN REGISTERED DOMESTIC PARTNER INVALID.

Tax Court: R.J. Wellington v. Township of Hillsborough; Docket No. 014156-2011, opinion by DeAlmeida, P.J.T.C., decided October 24, 2012. For plaintiff Jeffery D. Gordon, Esq. (Archer & Greiner, P.C., attorneys); for defendant Martin Allen, Esq. (DiFrancesco, Bateman, Coley, Yospin, Kunzman, Davis, Lehrer & Flaum, P.C., attorneys).

The court held that veteran who suffered 100% permanent disabilities as a result of exposure to enemy chemical weapons during Operation Northern Watch/Operation Southern Watch qualifies for exemption from local property taxes for his dwelling and lot pursuant to N.J.S.A. 54:4-3.30. Fact that veteran's exposure to enemy chemical weapons took place in the United States, where the weapons were transported by the military for analysis, does not vitiate exemption. According to N.J.S.A. 54:4-8.10, the theater of operation of Operation Northern Watch/Operation Southern Watch was not limited to the Arabian Peninsula and Persian Gulf. In addition, the court held that the veteran's failure to file a written claim for exemption with the municipal tax assessor did not vitiate the exemption. Finally, court held that N.J.A.C. 18:28-2.10(b), which provides that a veteran who owns his or her dwelling as joint tenants with someone other than a registered domestic partner, is without statutory foundation and is invalid.

(20 Pages)

**GROSS INCOME TAX - N.J.S.A. 54A:5-1C - NET GAINS OR INCOME  
FROM DISPOSITION OF PROPERTY - FEDERAL EXCLUSION FROM  
CAPITAL GAINS ON SALE OF QUALIFIED SMALL BUSINESS STOCK**

Tax Court: Emilia A. Aciu v. Director, Division of Taxation; Docket No. 020999-2010, opinion by Menyuk, J.T.C., decided October 9, 2012. For plaintiff - James B. Evans, Jr., Esq. (Kulzer & DePadova, P.A., attorneys); for defendant - Ramanjit K. Chawla (Jeffrey S. Chiesa, Attorney General of New Jersey, attorney).

Defendant Director disallowed the exclusion of fifty percent of the gain on the sale of qualified small business stock in the calculation of net gains or income from the disposition of property. On cross-motions for summary judgment, the court granted the Director's motion and denied the plaintiff's, concluding that the New Jersey Gross Income Tax Act, N.J.S.A. 54A:5-1c, did not incorporate the exclusion permitted by I.R.C. § 1202.

(17 Pages)

**STATE GROSS INCOME TAX - CREDIT FOR TAX PAID TO OTHER JURISDICTIONS**

Tax Court: Beljakovic et al. v. Director, Div. of Taxation, Docket No. 004551-2010; opinion by Narayanan, J.T.C., decided August 1, 2012. For plaintiff - John L. Berger (Lowenstein Sandler, P.C., attorneys); for defendant - Michael J. Duffy (Jeffrey S. Chiesa, Attorney General of New Jersey, attorney).

Held: Defendant's determination to deny the plaintiffs any credit for personal income tax paid to New York on passed through S corporation income was incorrect. Although the S corporation of which plaintiff was a shareholder allocated 100% of its corporate income to New Jersey despite such income being undisputedly sourced to New York State and New York City, the allocation was required by the Corporation Business Tax ("CBT") Act due to the entity's lack of a regular place of business in New York. The exception to the grant of credit for S corporation income allocated to New Jersey in N.J.S.A. 54A:4-1(c) should be interpreted to effectuate the language and intent of the credit allowance in N.J.S.A. 54A:4-1(a), namely, to avoid double or multiple taxation of the same income. The Defendant's regulations properly accomplish such purpose, and his application of the same to plaintiffs' case was incorrect. Defendant's motion for summary judgment is denied, and plaintiffs' cross-motion for summary judgment is granted.

(33 Pages)

**GROSS INCOME TAX - AMENDMENT OF INCOME TAX RETURN - CLAIM OF RIGHT DOCTRINE - TAXPAYERS NOT PERMITTED TO AMEND INCOME TAX RETURN TO SHOW REDUCTION IN INCOME ATTRIBUTABLE TO FORFEITURE OF FUNDS IN SUBSEQUENT YEARS TO SETTLE CLAIMS ASSERTED AGAINST THEM ARISING FROM FRAUDULENT ACTS OF TAXPAYERS' EMPLOYER.**

Tax Court: Joseph J. Murphy, et al v. Director, Division of Taxation; Docket No. 005608-2011, opinion by DeAlmeida, P.J.T.C., decided July 24, 2012. For plaintiff Harry D. Shapiro, Esq. (Saul Ewing, LLP, attorneys); for defendant David B. Bender, Deputy Attorney General (Jeffrey S. Chiesa, Attorney General of New Jersey, attorney).

The court held that taxpayers may not amend their 2005 gross income tax return to reflect a reduction in their taxable income for that year based on \$10 million in payments made by the taxpayers in 2008 to settle civil forfeiture and other claims asserted against them with respect to fraudulent activity of the taxpayers' employer. Court declined to decide whether federal claim of right doctrine is incorporated in New Jersey law.

(22 Pages)

## **ESTATE TAXATION - DATE OF DEATH VALUATION**

Tax Court; Estate of Theodore Warshaw v. Dir., Div. of Taxation; Docket No. 004000-2009, opinion by Andresini, J.T.C., decided June 28, 2012. For plaintiff - David M. Edelblum (Feingold & Edelblum, LLC; attorneys); for defendant - Heather Lynn Anderson (Jeffrey S. Chiesa, Attorney General of New Jersey; attorney).

Plaintiff, a victim of the Bernard L. Madoff Ponzi scheme, appealed the Director's denial of Plaintiff's request for refund of New Jersey estate tax, and moved for summary judgment. Plaintiff asserted that Plaintiff's estate tax return overstated the true value of the net estate because the value it reported on the return included a fictitious value of the estate's individual retirement account. Defendant cross-moved for summary judgment and contended that the estate's refund was properly denied because subsequent events cannot be considered for estate valuation. The court granted Plaintiff's motion for summary judgment and denied Defendant's motion for summary judgment, holding that subsequent events may be considered to establish evidence of value as it existed on the date of death for New Jersey estate tax purposes. The court found that the subsequent information regarding the Madoff Ponzi scheme provides evidence that the individual retirement account was worthless on the valuation date. Therefore, the court held that the Plaintiff met its burden to establish that the Director improperly denied the estate's claim for refund.

(18 Pages)

**GROSS INCOME TAX - EXCLUSION FROM GROSS INCOME FOR WORKER'S COMPENSATION**

Tax Court: Frederic J. Sa v. Director, Division of Taxation, Docket No. 000047-2011; opinion by Narayanan, J.T.C., decided May 31, 2012, released for publication June 29, 2012. For plaintiff - Frederic J. Sa, pro se; for defendant - Ramanjit Chawla (Jeffrey S. Chiesa, Attorney General of New Jersey, attorney).

Held: Plaintiff, a police officer for Union Township, was absent from work during certain periods of time in 2006 and 2007 due to a service-connected injury. Pursuant to the collective bargaining agreement between the Policemen's Benevolent Association and Union Township, police officers who were absent from work due to service-connected injuries were to be paid their regular straight time rate of pay, with no charge of sick leave time, however, any amounts received from Workmen's Compensation Insurance were to be paid over to the township. Plaintiff received his regular rate of pay for the time he was absent. Union Township received the amounts plaintiff was entitled to under the Workmen's Compensation Act as temporary disability payments from Garden State Municipal Joint Insurance Fund, which Fund provided the requisite insurance coverage for Union Township's employees.

Plaintiff excluded the entire amounts received from Union Township during the time he was absent due to his service-connected injury from his gross income tax returns for tax years 2006 and 2007, on grounds the payments were made under workmen's compensation acts and excludible under N.J.S.A. 54A:6-6(a). The Defendant included the entire amounts as income on grounds the payments were made pursuant to the collective bargaining agreement, therefore, were taxable as sick leave pay under N.J.S.A. 54A:5-1(a).

The court determined that the payments received by plaintiff were generally in the nature of sick leave payments; however, a portion of the payments in the amount of the weekly temporary disability payments received by Union Township, was properly characterized as payments received under workmen's compensation acts, and was excludible from plaintiff's gross income. As there was only factual support in this regard for tax year 2006, the Defendant's determination was reversed in part.

#1214

**LOCAL PROPERTY TAXATION - BUSINESS PERSONAL PROPERTY -  
N.J.S.A. 54:4-1 - EQUAL PROTECTION - SPECIAL LEGISLATION -  
UNIFORMITY**

Tax Court: Verizon New Jersey Inc. v. Hopewell Borough, Docket No. 012215-2009; opinion by Menyuk, J.T.C., decided June 26, 2012. For plaintiff - Susan A. Feeney (McCarter & English, attorneys); for defendant - Paul R. Adezio (Mason, Griffin & Pierson, attorneys); for intervenor State of New Jersey - Marlene G. Brown (Jeffrey S. Chiesa, Attorney General of New Jersey, attorney); for amicus curiae New Jersey State League of Municipalities, Richard A. Rafanello (Shain, Schaffer & Rafanello, P.C., attorneys).

The court construes N.J.S.A. 54:4-1 to subject a local telephone exchange company to tax on its business personal property when it provides dial tone and access to 51% of a local exchange, with the 51% test to be performed annually as of the assessment date. As so construed, N.J.S.A. 54:4-1 comports with federal and state guarantees of equal protection, does not constitute special legislation and does not violate the Uniformity Clause.

(35 pages)



**HOMESTEAD PROPERTY TAX REIMBURSEMENT - DISTRIBUTIONS FROM FIXED-TERM, VARIABLE RATE ANNUITY ARE INCLUDED IN APPLICANT'S "ANNUAL INCOME" FOR HOMESTEAD PROPERTY TAX REIMBURSEMENT ELIGIBILITY PURPOSES ONLY TO THE EXTENT THAT THE DISTRIBUTIONS DO NOT INCLUDE RETURN OF THE APPLICANT'S INITIAL INVESTMENT IN THE ANNUITY.**

Tax Court: Rita J. Hawe v. Director, Division of Taxation; Docket No. 019191-2011, opinion by DeAlmeida, P.J.T.C., decided May 29, 2012. For plaintiff Michael P. Sawka (Law Offices of Michael Sawka, LLC, attorneys); for defendant Carl A. Wohlleben, Deputy Attorney General (Jeffrey S. Chiesa, Attorney General of New Jersey, attorney).

The court held that for purposes of the homestead property tax reimbursement, an applicant's "annual income" includes distributions from fixed-term, variable rate annuities only to the extent that the distributions do not include the return of the applicant's initial investment in the annuity. The Director, Division of Taxation's contrary interpretation of N.J.S.A. 54:4-8.67 and N.J.A.C. 8:83-6.2(c)(1) is unreasonable because it extends the statute beyond its plain language.

(10 Pages)

Tax Court; Glenn B. Slater, Pro Se v. Director, Division of Taxation; Docket No. 011825-2008, opinion by Bianco, J.T.C., decided April 27, 2012. For plaintiff - Glenn B. Slater (Glenn B. Slater; Pro Se); for defendant - Heather Lynn Anderson (Jeffrey S. Chiesa, Attorney General of New Jersey; Heather Lynn Anderson, Deputy Attorney General of New Jersey; attorneys; Ms. Anderson on the brief).

The Tax Court treated a letter from *pro se* plaintiff, Glenn B. Slater (Mr. Slater), as a motion for summary judgment seeking a refund of Sales and Use tax from defendant, Director, Division of Taxation (Director); which was opposed by a cross-motion of the Director, seeking to dismiss Mr. Slater's complaint with prejudice for lack of subject matter jurisdiction, pursuant to R. 4:6-2(c). Although Mr. Slater had filed for Bankruptcy and received a Bankruptcy Court order expunging (but not discharging) the claims of the Director, the court found that the Expungement Order was vacated as a matter of law, and the issue of dischargeability of those claims was rendered moot, when Mr. Slater's bankruptcy proceeding was dismissed. The court further determined that that it was not divested of jurisdiction of the matter by virtue of the bankruptcy proceeding. On the Director's cross-motion, the court found that the instant action was not timely appealed. The court denied Mr. Slater's motion and granted the Director's cross motion; the complaint was dismissed with prejudice.

(13 Pages)

**LOCAL PROPERTY TAXATION - CHAPTER 91 REQUEST - TRANSFER OF PROPERTY - FAILURE TO RESPOND**

Tax Court; Noam (ETAL), Yeshivat v. Borough of Paramus; Docket No. 000532-2011, opinion by Nugent, J.T.C., decided May 7, 2012. For plaintiff - John J. O'Hara, III (Margolis Edelstein, attorneys); for defendant - Marc A. Raso (Marc A. Raso, attorney).

Defendant moved pursuant to N.J.S.A. 54:4-34 ("Chapter 91") to dismiss plaintiff's 2011 tax appeal for failure to respond to the assessor's request for the subject property income and expense information which covered the period October 1, 2009 through September 30, 2010. The property was listed in the assessor's records as income-producing during that time. Dated October 1, 2010, the request was received by the owner who transferred the property to plaintiff by deed dated October 7, 2010. No response to the request was provided. Plaintiff contends that upon transfer the use of the property ceased to be income-producing and opposes the motion on the following grounds; the dismissal sanction applies to income-producing property only, and, plaintiff had no duty to provide property information in the possession of its predecessor-in-interest. The court finds that the failure of the prior owner to respond to a valid Chapter 91 request for property which produced income during the requested reporting period is a defect which runs with the land and acts to bar plaintiff's tax appeal. Further, plaintiff's assertion that the court should impose upon the assessor the additional duty to track property transfers and re-send the Chapter 91 request to each new owner is rejected.

STATE TAXATION - PROPERTY TAX REIMBURSEMENT

Tax Court; Robert G. Howard v. Director, Division of Taxation, Docket Nos. 015539-2009, 020955-2010; opinion by Nugent, J.T.C., decided April 11, 2012. For plaintiff - Robert G. Howard, pro se; for defendant - Jill McNally (Jeffrey S. Chiesa, Attorney General of New Jersey, attorney).

Plaintiff, the senior citizen owner of a multi-unit dwelling, applied for property tax reimbursement under N.J.S.A. 54:4-8.67, a statute designed to freeze property taxes of an eligible claimant at the amount paid in the base year. Defendant, Director, Division of Taxation having determined plaintiff occupied 50% of his property categorized as a multi-unit dwelling consequently deemed plaintiff as eligible for only 50% of the reimbursement. Plaintiff appealed the determination to the Tax Court claiming that the statute did not adequately define "dwelling" and that his residence constituted a one-family home. Based on the evidence adduced at trial the court found that the statute affords a property tax freeze to the owner's dwelling actually and continually occupied as his principal residence, which in this case was one unit in a two-family house, and thereby affirmed the director's determination to reduce plaintiff's property tax reimbursement to 50% of the total available to him.

(14 Pages)

**LOCAL PROPERTY TAX - VETERAN'S EXEMPTION - N.J.S.A. 54:4-3.30 - RETROACTIVE REFUND - EQUAL PROTECTION - CHANGE IN MUNICIPAL POLICY**

Tax Court: Del Priore v. Edison Twp., Docket No. MID L-172-12; opinion by Menyuk, J.T.C. (t/a), decided March 29, 2012; for plaintiff - Salvatore Del Priore, pro se; for defendant - Bridget M. Riepl (Hoagland, Longo, Moran, Dunst & Doukas, attorneys).

Municipal governing body's determination to change its long-standing practice of fully refunding local property taxes paid by a veteran qualified for exemption pursuant to N.J.S.A. 54:4-3.30 retroactive to the effective date of disability, and to limit such refunds to a period not exceeding twenty-four months, does not violate equal protection guarantees under the state and federal constitutions.

(19 Pages)

**STATE INHERITANCE TAX - VALUATION OF SHARES INHERITED BY  
DECEDENT**

Tax Court: Estate Of Claire Schinestuhl, By Its Executrix, Mary T. Acquardo v. Director, Div. of Taxation, Docket No. 007133-2011; opinion by Narayanan, J.T.C., decided February 2, 2012. For plaintiff - Ralph G. Conte (Rospond, Rospond & Conte, P.C., attorney); for defendant - Heather Lynn Anderson (Jeffrey S. Chiesa, Attorney General of New Jersey, attorney).

Held: Claire Schinestuhl was the sole beneficiary of the assets of her brother Prescott Schinestuhl. One of the inherited assets was 22,121 shares in Paxar Corporation, a publicly traded company. Plaintiff incorrectly argued that the shares were only a component of Claire's inheritance, and that as of the date her death Claire's interest in the inheritance was contingent because Prescott's Will was denied probate, and this interest became fixed when Prescott's estate liquidated the shares in Paxar and distributed the proceeds along with the other assets to Claire's estate about two years after Claire's death. The defendant properly determined that these shares must be separately valued and Claire's date-of-death was the controlling valuation date. The Director however did not provide sufficient detail to substantiate his computation of Paxar's trading prices therefore the court used the prices reported on the New York Stock Exchange and arrived at a value lower than the Director's which reduced the Director's inheritance tax assessment amount. The Director's final determination is affirmed subject to the mathematical re-computation undertaken by the court.

(20 Pages)

#1207

**LOCAL PROPERTY TAXATION - PROPERTY TAX ASSESSMENT**

Tax Court; Gale & Kitson Fredon Golf, LLC v. Township of Fredon; Docket Nos. 007539-2008 and 004341-2009, opinion by Bianco, J.T.C., decided December 22, 2011; revised February 7, 2012. For plaintiff - Michael S. Garofalo (Laddey, Clark & Ryan, LLP; attorneys); for defendant - William E. Hinkes (Hollander, Strelzik, Pasculli, Pasculli, Hinkes, Gacquin, Vandenberg & Hontz, LLC; attorneys).

On Plaintiff's, Gale & Kitson Fredon Golf, LLC ("Gale & Kitson"), challenge to the 2008 and 2009 property tax assessments of its property known as Bear Brook Golf Club ("Bear Brook"), located within the Defendant municipality, Township of Fredon ("Fredon"), the Tax Court found that neither Gale & Kitson nor Fredon met their respective burdens for any adjustment to be made to the assessment placed on Bear Brook for either of the tax years in dispute and accordingly affirmed Bear Brook's 2008 and 2009 assessments. The Court found that the cost approach is the most appropriate valuation method for appraising a semi-private golf club like Bear Brook, and rejected Gale & Kitson's income approach analysis. However, the Court rejected Fredon's cost approach for certain deficiencies in its analysis, irrespective of the fact that Fredon's conclusion of value, if accepted by the court, would have resulted in a significant reduction in Gale & Kitson's assessment for at least tax year 2008 (albeit not to the extent sought by Gale & Kitson). The court found that a municipality is equally bound by the presumption of correctness of the assessment as any taxpayer. This is no less true when, as here, in defending a challenge to an assessment, the municipality's value conclusion supports a reduction of the assessment. Furthermore, when value is at issue, there can be no per se admission that the assessment is incorrect simply because the municipality's conclusion of value would result in a lower assessment.

(18 Pages)

**SALES AND USE TAX - DISTRIBUTION OF ELECTRICITY IS "UTILITY SERVICE" SUBJECT TO SALES AND USE TAX - CHARGES AUTHORIZED BY THE LEGISLATURE AND BOARD OF PUBLIC UTILITIES TO RECOUP STRANDED COSTS ASSOCIATED WITH INTRODUCTION OF COMPETITION INTO ELECTRICITY MARKET, TO FINANCE SOCIETAL BENEFITS PROGRAMS, AND FOR OTHER PURPOSES INCLUDED IN "RECEIPTS" FROM UTILITY SERVICE WHEN CALCULATING SALES TAX**

Tax Court: Atlantic City Showboat, Inc. v. Director, Division of Taxation; Docket No. 000036-2007; Our Lady of Lourdes Medical Center, Inc. v. Director, Division of Taxation, Docket No. 006119-2007, opinion by DeAlmeida, P.J.T.C., decided January 24, 2012. For plaintiff Atlantic City Showboat, Inc. - Peter L. Faber and Leah Samit Robinson (McDermott Will & Emery, LLP, attorneys); for plaintiff Our Lady of Lourdes Medical Center, Inc. - Jonathan M. Korn (Blank Rome, LLP, attorney); for defendant Jill C. McNally, Deputy Attorney General (Jeffrey S. Chiesa, Attorney General of New Jersey, attorney).

The court held that the amount charged for the distribution of electricity through the local distribution infrastructure to a consumer is subject to sales tax as receipts from the "the transportation or transmission of natural gas or electricity by means of mains, wires, lines or pipes, to users or customers," a taxable "utility service" within the meaning of N.J.S.A. 54:32B-2(hh). In addition, the court held that charges the Legislature and Board of Public Utilities authorized electric public utilities to charge customers to recover expenses associated with electricity generation, demand management, customer services, energy-related social programs, and other costs, should be included in receipts from utility services for the purpose of calculating sales tax.

(29 Pages)



**STATE INHERITANCE TAX - GIFT IN CONTEMPLATION OF DEATH**

Tax Court: Estate of Peter J. Muscle, by its Executrix, Linda Jacskon v. Director, Div. of Taxation, Docket No. 001198-2010; opinion by Narayanan, J.T.C., decided November 30, 2011, approved for publication December 15, 2011. For plaintiff - Frederick W. Rose (Lindabury, McCormick, Estabrook & Cooper, P.C., attorney); for defendant - Jill C. McNally (Paula T. Dow, Attorney General of New Jersey, attorney).

Held: Defendant properly determined that the decedent's reported gift of shares of stock in PSE&G to the decedent's executrix, made within six months of the decedent's death, was in contemplation of his death and therefore taxable pursuant to N.J.S.A. 54:34-1(c). Based on the facts adduced during trial, the decedent's gift of the stock while impelled by his desire to qualify for Medicaid coverage, was made to Jackson, the natural object of decedent's bounty and comprised of more than half of his total estate. Reasonable persons would not differ that the transfer made by the decedent was the product of an impelling motive to make a present disposition in lieu of a testamentary disposition. The decedent's gift was in the nature of a distribution of property, since the result achieved by the decedent during his life, namely Jackson becoming an owner of the stock, is the same result that would have occurred upon his death. Therefore, the transfer was properly determined by the Director to be taxable.

(20 Pages)

**LOCAL PROPERTY TAX; N.J.S.A. 54:3-21; LIMITATIONS;  
AMENDMENT OF COMPLAINT**

Tax Court: Univ. Cottage Club of Princeton v. Princeton Bor., Docket Nos. 001896-2002; 001151-2003 and 002613-2004; opinion by Menyuk, J.T.C., decided November 18, 2011; approved for publication December 15, 2011. For plaintiff - Thomas M. Olson (McKirdy & Riskin, P.A., attorney); for defendant - Harry Haushalter, Esq.

Complaint alleging only that property is exempt from local property taxation may not be amended to add claims of overvaluation and discrimination following the expiration of the statute of limitations.