

**LOCAL PROPERTY TAX - SUMMARY JUDGMENT - REFUND OF OVERPAID
MUNICIPAL PARKING TAX**

Tax Court: Propark of America New York, LLC and Block 255, LLC v. City of Hoboken, Docket Number 007721-2011; opinion by Brennan, J.T.C., decided January 6, 2014. For plaintiffs - Joseph Norcia (Waters, McPherson, McNeill P.C., attorneys); for defendant - Joseph Daly (Wiener Lesniak LLP, attorneys).

Plaintiffs move for summary judgment seeking a refund plus interest of overpaid municipal parking taxes paid to the defendant, City of Hoboken ("City"). The City has filed a cross motion for summary judgment seeking a determination that overpayments of the City's municipal parking taxes are non-refundable. The Court finds that because the Legislature enacted the municipal parking tax statute without a provision for the refund of overpaid taxes, the City is not obligated to refund Plaintiffs' voluntary overpayment resulting from Plaintiffs' mistake of law. In order to adequately create a budget and rely on the presumptive validity of statutes in planning the government budget, the City may rely on the taxpayer's written certification and may assume that the payment remitted is accurate and in conformance with the City ordinance. Absent specific statutory or ordinance language regarding a refund, or legislative history indicating that a refund was intended, the court finds that no refund is due.

(12 pages)

STATE TAXATION - USE TAX

Tax Court: J&J Snack Food Sales Corp. v. Director, Div. of Taxation, Docket No. 004986-2012; opinion by Sundar, J.T.C., decided December 31, 2013. For plaintiff - A. Fred Ruttenberg and Steven S. Poulathas (Flaster Greenberg P.C., attorneys); for defendant - David B. Bender (John Hoffman, Acting Attorney General of New Jersey, attorney).

Held: Defendant's imposition of use tax upon parts purchased by plaintiff for which no sales tax was paid, and which parts were used to make pretzel warmers/display cases, is proper, even if the warmers are subsequently shipped to plaintiff's out-of-State customers. Neither the parts, nor the assembled warmers are "stored" or "withdrawn from storage" therefore, they are not excluded from use tax. The warmers are not part of the manufacturing process of the frozen pretzels, plaintiff's primary business and operation, therefore, the parts are not exempt from tax. The court also finds that the equitable doctrines of laches and estoppel do not apply to the assessment because defendant's prior audit which did not impose use tax on the same transactions, was based upon a misinterpretation of case law, plaintiff did not prove any detrimental reliance, and no extreme circumstances exist which outweigh the public interest in imposing statutorily requires tax assessments. The court however removes the interest and penalty included in the assessment under N.J.S.A. 54:49-11(a). Defendant's summary judgment motion is granted in part, and plaintiff's cross-motion for summary judgment is denied.

(31 Pages)

LOCAL PROPERTY TAXATION - PROPERTY TAX ASSESSMENT - VALUATION

Tax Court; Victor Aliotta et al. v. Twp. of Belleville; Docket Nos. 007055-2008, 009644-2009, 009418-2010, 008552-2011, opinion by Sundar, J.T.C., decided December 9, 2013. For plaintiffs - Joshua Novin (Joshua D. Novin, P.A., attorney); for defendant - Christopher Stracco (Day Pitney, L.L.P., attorney).

Plaintiffs Victor Aliotta, Mary R. Aliotta, and Silo Inc., challenged the local property tax assessments for tax years 2008, 2009, 2010, and 2011 imposed upon property located in Defendant, Township of Belleville, which is a 2.69 acre lot, improved by a single-family dwelling. It is owned by Silo, Inc. with the individual plaintiffs retaining a life estate. The site located behind the residence is used as Contractor's Yard. Silo Inc. leases sections of the Contractor's Yard to various commercial tenants which use the leased land to store, park or repair maintain their commercial vehicles such as trailers, which they own. Tenants pay rent only for use of the land and all other expenses such as utilities. Real estate taxes are however paid by plaintiffs. In a prior ruling, the court had found two trailers and a Quonset Hut to be taxable as real property. For valuation purposes, the court agreed with plaintiffs' expert that a hybrid method was appropriate. Based on the evidence, the court determined the property's highest and best use as vacant, and as improved, is its current use, namely, as a Contractor's Yard (as improved), with the residence. The court applied the income approach to value the Contractor's Yard; a cost approach to value the improvements located on the Contractor's Yard, with the exception of one such improvement for which the court used an income approach. The court applied an income approach to value the residence, but provided adjustments for condition and location. The court reduced the assessment for 2008, 2009, and 2011, and affirmed the assessment for 2010.

(49 Pages)

STATE TAXATION - NEW JERSEY CORPORATION BUSINESS TAX - NEXUS DETERMINATION

Tax Court: Village Super Market of PA, Inc. v. Director, Division of Taxation, Docket Number 021002-2010; opinion by Brennan, J.T.C., decided October 23, 2013. For plaintiff - Michael A. Guariglia (McCarter & English, LLP, attorneys); for defendant - Michael J. Duffy (John J. Hoffman, Acting Attorney General of New Jersey, attorney).

Plaintiff, a Pennsylvania Corporation, is subject to New Jersey Corporation Business Tax pursuant to N.J.S.A. 54: 10A-1. The Plaintiff has nexus with New Jersey due to its relationships with both its New Jersey limited partnership and its New Jersey parent corporation, respectively, as a result of being in the same line of business, being parties to the same New Jersey-governed Cash Management Agreement, having common agents, managers, officers, and directors and sharing the same principal place of business. Plaintiff does not have a discreet and independent relationship with either its parent corporation or its limited partnership.

(25 Pages)

LOCAL PROPERTY TAXATION - PROPERTY TAX ASSESSMENT

Tax Court; Fairfield Dev. c/o 46 Auto Imports v. Totowa Borough; Docket No. 002875-2013; Schweighardt, Anton & Simon v. Totowa Borough; Docket No. 002876-2013, opinion by Bianco, J.T.C., decided September 30, 2013, released as a published opinion October 23, 2013. For plaintiffs - Kevin S. Englert (The Irwin Law Firm, P.A.; attorneys); for defendant - Raymond B. Reddin (Piro, Zinna, Cifelli, Paris & Genitempo, P.C.; attorneys).

On Defendant Totowa Borough's ("Totowa") Motions to Dismiss Plaintiffs Fairfield Development's and Anton & Simon Schweighardt's Complaints for failure to respond to information requests under N.J.S.A. 54:4-34 ("Chapter 91"), the Tax Court found that Totowa failed to comply with the requirements of Chapter 91 and thus was not entitled to the dismissals. In particular, Totowa failed properly to include a copy of statute, as required by the plain language of Chapter 91.

(6 Pages)

STATE GROSS INCOME TAX - ERRONEOUS REFUNDS

Tax Court: Hill v. Director, Div. of Taxation, Docket No. 018645-2011 and Docket No. 017501-2011; opinion by Sundar, J.T.C., decided October 23, 2013. For plaintiffs - Roy B. Hill (for pro-se minor plaintiffs); for defendant - David B. Bender (John J. Hoffman, Acting Attorney General of New Jersey, attorney).

Held: Defendant's determination to seek recovery of erroneously paid gross income tax ("GIT") refunds to plaintiffs was correct. Non-resident plaintiffs contended that defendant was estopped from seeking recovery of refunds because their nonresident GIT returns had reported all of the distributed trust income, and defendant issued refunds after examination of such returns. Plaintiffs also argued estoppel based on prior telephonic advice from defendant that nonresidents are not subject to the GIT, and because plaintiffs were time-barred from seeking credit for the GIT in Pennsylvania where they reside. However, plaintiffs' nonresident GIT returns did not report the amount of the New Jersey source trust income. Further, plaintiffs did not dispute that the distributions paid to them by resident trusts were subject to GIT. Moreover, the defendant's refund payment by its accounting section was not based upon a substantive judgment and determination of the merits of refund sought on plaintiffs' GIT returns. Therefore, the defendant was not estopped from seeking the timely-initiated recovery of the erroneous refunds. Defendant's motion for summary judgment is granted and plaintiffs' cross-motion for summary judgment is denied.

(17 Pages)

**LOCAL PROPERTY TAX - VALUATION OF ATLANTIC CITY CASINO-HOTEL -
INCOME APPROACH TO VALUATION - DETERMINATION OF NET OPERATING
INCOME - EXTRACTION OF BUSINESS VALUE UNDER INCOME APPROACH**

Tax Court: Marina District Development Co., LLC v. City of Atlantic City; Docket No. 008116-2009; Docket No. 008117-2009; Docket No. 003188-2010; Docket No. 003194-2010; opinion by DeAlmeida, P.J.T.C., decided October 18, 2013. For plaintiff - Herbert Bass, Esq. (Fox Rothschild, LLP, attorneys, Peter M. Sarkos, Esq., co-counsel at trial and on the briefs); for defendant - Michael J. Ash, Esq., (DeCotiis, Fitzpatrick & Cole, LLP, attorneys, Russell J. Passamano, Esq., and Megan E. Sassaman, Esq., co-counsel at trial and on the briefs).

The court adopts the income approach to determine the true market value of an Atlantic City casino-hotel. In addition, the court held that when determining net operating income under the income approach an appraisal expert's averaging of the subject property's annual net operating income over a four-year period lacks credibility, as averaging does not reflect the expert's weighing of various factors having an impact on the subject property's future earning potential. In addition, court held that failure to extract business value through application of a hypothetical management fee inflated expert's opinion of value under income approach. The court adopted opinion of one of plaintiff's appraisal experts. As a consequence, assessments on subject property reduced for two tax years.

(64 Pages)

LOCAL PROPERTY TAXATION - PROPERTY TAX ASSESSMENT

Tax Court; 90 Riverdale, L.L.C. v. Borough of Riverdale; Docket Nos. 004614-2009, 005456-2010 and 006655-2011, opinion by Bianco, J.T.C., decided July 30, 2013, approved for publication September 16, 2013. For plaintiff - Jeffrey A. Zenn (Sokol, Behot, & Fiorenzo, attorneys); for defendant - Richard J. Clemack (Richard J. Clemack, attorney).

On Plaintiff's, 90 Riverdale, L.L.C. ("90 Riverdale"), challenge to the 2009, 2010, and 2011 property tax assessments of its property, a two-story, light industrial warehouse/office building ("Subject Property"), located within the Defendant municipality, Borough of Riverdale ("Riverdale"), the Tax Court found that neither 90 Riverdale nor Riverdale met their respective burdens for an adjustment of the assessment placed on the Subject Property for any of the tax years in dispute and accordingly affirmed the Subject Property's 2009, 2010, and 2011 assessments. The court found that the income approach was the most appropriate valuation method for the Subject Property. However, neither party's expert presented reliable evidence to allow the court to determine the value of the property using this method: 90 Riverdale's expert, in addition to utilizing a market approach estimate, which yielded vastly different results, predicated his income approach on the removal of a large area of second floor space, without substantiating the necessity or cost for the removal, while Riverdale's expert advocated for an increased assessment based on separate values for each the industrial and office use of the Subject Property, as well as an excess land theory, without any reliable supporting analysis.

(18 Pages)

LOCAL PROPERTY TAXATION - CHAPTER 91 - DISMISSAL FOR FAILURE TO COMPLY - USE OF ONE FORM FOR ADJACENT LOTS

Tax Court: Paramus Associates, LLP/Home Depot, USA, Inc. v. Borough of Paramus; Docket No. 002755-2012; opinion by Nugent, J.T.C., decided August 2, 2013. For plaintiff - Adam R. Jones (Garippa, Lotz & Giannuario, attorneys); for defendant - Mark A. Raso (Mark A. Raso, attorney).

The within tax appeal challenges the assessment on two contiguous lots owned by plaintiff which contain a retail store and an adjacent parking area. The municipal tax assessor sent two identical forms, one for each lot, seeking financial information for use in reaching the property tax assessments for 2012, pursuant to N.J.S.A. 54:4-34 (Chapter 91). When plaintiff prepared and returned the requested income and expense information for the property using just one form rather than two, defendant moved to dismiss the complaint for failure to comply with Chapter 91. The Tax Court held that a taxpayer receiving two Chapter 91 requests for two separate lots governed by a singular lease agreement has not "failed or refused to respond" pursuant to N.J.S.A. 54:4-34 when the timely response submitted to the assessor, albeit on a single form, contains all of the income and expense related to the property.

(14 Pages)

LOCAL PROPERTY TAX - VALUATION OF CONTAMINATED PROPERTY - TAXPAYER'S INCIDENTAL USE OF PROPERTY WHILE AWAITING APPROVAL OF ENVIRONMENTAL CLEANUP PLAN DOES NOT PRECLUDE CONSIDERATION OF ENVIRONMENTAL CONTAMINATION WHEN DETERMINING ASSESSABLE VALUE - GOVERNMENT-APPROVED REMEDIATION PLAN NOT NECESSARY PREDICATE FOR CONSIDERATION OF ENVIRONMENTAL CONTAMINATION IN DETERMINING ASSESSABLE VALUE - ARMS' LENGTH SALE OF SUBJECT PROPERTY TO POTENTIAL REDEVELOPER IS CREDIBLE EVIDENCE OF TRUE MARKET VALUE OF PROPERTY AS CONTAMINATED.

Tax Court: Orient Way Corp., et al v. Township of Lyndhurst; Docket Nos. 003895-2006; 004343-2007; 003219-2008, opinion by DeAlmeida, P.J.T.C., decided July 22, 2013. For plaintiff Steven D. Muhlstock, Esq. (Gittleman, Muhlstock & Chewcaskie, LLP, attorneys); for defendant Kenneth A. Porro, Esq., (Wells, Jaworski & Liebman, LLP, attorneys).

The court held that taxpayer who assumed responsibility for the remediation of contaminated industrial property it intends to redevelop is not precluded from seeking reduction in assessed value of property to account for contamination. The incidental use of the property by an entity not responsible for the contamination, not related to the polluters of the property and which does not contribute to the contamination while awaiting approval of remediation plan does not preclude reduction in assessed value to account for contamination. In addition, the court held that a government-approved remediation plan is not a necessary predicate for the consideration of contamination when determining assessable value. Finally, the court held that an arms' length sale of contaminated property to purchaser intending to remediate the property and aware of estimate of remediation costs is credible evidence of true market value of the property as contaminated.

(30 Pages)

STATE TAXATION - SALES AND USE TAX - MARINE TERMINAL FACILITY

Tax Court: Ironbound Intermodal Industries, Inc. v. Director, Division of Taxation, Docket Number 012089-2008; opinion by Brennan, J.T.C., decided July 19, 2013. For plaintiff - Susan Feeney (McCarter & English, LLP, attorneys); for defendant - Heather Lynn Anderson (John J. Hoffman, Acting Attorney General of New Jersey, attorney).

Plaintiff's container storage services and chassis repair services provided at its three Newark facilities are exempt from the Sales and Use Tax, N.J.S.A. 54:32B-1 et seq., based upon the exemptions in N.J.S.A. 54:32B-8.12. Plaintiff constitutes a marine terminal facility as intended by the Legislature because Plaintiff's storage services and chassis repair services are necessary and convenient to the loading, unloading and handling of cargo at Port Newark and support the legislative purpose of the N.J.S.A. 54:32B-8.12 exemption, namely to assist in the expansion of the shipping industry in New Jersey and to remain competitive with nearby states.

(14 Pages)

LOCAL PROPERTY TAX - COUNTY OWNED PROPERTY - PROPERTY TAX EXEMPTION

Tax Court: Borough of Paramus v. County of Bergen, Bergen County Improvement Authority Solomon Health Group, L.L.C. and Bergen Regional Medical Center, L.P.; Docket Nos. 11397-2008, 00531-2009, 00623-2010, 01563-2011, opinion by Nugent, J.T.C.; decided July 8, 2013. For plaintiff - William F. Rupp (Ferrara, Turitz, Harraka & Goldberg, PC, attorneys). For defendants County of Bergen and Bergen County Improvement Authority - Joseph A. Rizzi (Beattie Padavano, LLC, attorneys); for defendants Solomon Health Group L.L.C. and Bergen Regional Medical Center, L.P. - Steven P. Sukel (Sukel & Associates, P.A., attorneys).

Operation of a county owned hospital by a third-party for-profit manager does not negate the property tax exemption applicable to county owned property used for a public purpose under N.J.S.A. 54:4-3.3. Left unresolved are two issues, both of which await further fact finding: 1) whether space leased to third-party providers vitiates the exemption as a private purpose; and 2) whether use of the space could constitute a de minimus use.

(27 Pages)

**LOCAL PROPERTY TAX - PROPERTY TAX ASSESSMENT - HIGHEST AND BEST
USE**

Tax Court; Donato Clemente v. South Hackensack; Docket No. 011103-2009, 009342-2010, 000059-2011, opinion by Andresini, J.T.C., decided July 3, 2013. For plaintiff - Richard B. Nashel(Nashel & Nashel, LLC; attorney); for defendant - Steven D. Muhlstock (Gittleman, Muhlstock & Chewcaskie, L.L.P.; attorney).

Plaintiff, Clemente, the owner of a building located in Defendant township, South Hackensack, challenged the local property tax assessment for tax years 2009, 2010, and 2011. In valuing the building, the Tax Court found plaintiff's expert's highest and best use analysis flawed. Consequentially, the Tax Court affirmed the assessment.

(18 pages)

**LOCAL PROPERTY TAX -# NON-DEED RESTRICTIONS - LOW TO MODERATE
INCOME COOPERATIVE APARTMENT RESIDENCES - COOPERATIVE SALES
COMPARISON APPROACH**

Tax Court: Elizabeth Center Apartments Urban Renewal Corporation
v. City of Elizabeth; Docket Nos. 000892-2006 and 007092-2007;
opinion by Brennan, J.T.C., decided April 25, 2013. For plaintiff
- Amber N. Heinze and Kevin S. Englert (The Irwin Law Firm, P.A.,
attorney); for defendant - Robert D. Blau (Blau & Blau,
attorneys).

Non-deed restrictions controlling the sale price of a membership certificate of a cooperative developed as low to moderate income cooperative apartment residences have resulted in a unique and limited market in which to determine true value. The appropriate method to determine the restricted cooperative's true value is the cooperative sales comparison approach based upon the sales of membership certificates within the cooperative property.
(18 Pages)

SALES AND USE TAX EXEMPTION FOR ITEMS PRIMARILY USED IN THE TRANSMISSION OF TELEVISION INFORMATION INCLUDES CONVERTERS BUT NOT REMOTES - EXEMPT CONVERTERS MAY ALSO HAVE NON-TRANSMISSION FUNCTIONS- ASSESSMENT OF LATE AND UNDERPAYMENT PENALTIES IS REASONABLE WHERE REMOTES BY DEFINITION DID NOT MEET THE EXEMPTION ELIGIBILITY REQUIREMENTS OF N.J.S.A. 54:32b-8.13(e).

Tax Court: Comcast of South Jersey, Inc. v. Director, Division of Taxation; Docket No. 001153-2004; Comcast of Northwest New Jersey, LLC v. Director, Division of Taxation; Docket No. 001157-2004; Comcast of the Meadowlands, LLC v. Director, Division of Taxation; Docket No. 001160-2004; Comcast of Cablevision of Southeastern Pennsylvania, Inc. v Director, Division of Taxation; Docket No. 001163-2004; Comcast of Monmouth County, LLC v. Director, Division of Taxation; Docket No. 001165-2004; Comcast of New Jersey II, LLC v. Director, Division of Taxation; Docket No. 001168-2004; Comcast of Jersey City v. Director, Division of Taxation; Docket No. 01170-2004; Comcast of Gloucester County, LLC v. Director, Division of Taxation; Docket No. 001171-2004; Comcast of Ocean County, LLC v. Director, Division of Taxation; Docket No. 001173-2004; Comcast of Garden State, LP v. Director, Division of Taxation; Docket No. 001175-2004; Comcast of Plainfield, LLC v. Director, Division of Taxation; Docket No. 001177-2004; Comcast of Central New Jersey, LLC v. Director, Division of Taxation; Docket No. 001178-2004; Comcast of Burlington County, LLC v. Director, Division of Taxation; Docket No. 001179-2004; Comcast of Mercer County, LLC v. Director, Division of Taxation; Docket No. 001180-2004; opinion by Brennan, J.T.C., decided February 20, 2013. For plaintiff - David J. Shipley; for defendant - Marlene G. Brown S.D.A.G.

The court held that converters purchased by taxpayer were exempt from taxation pursuant to N.J.S.A. 54:32B-8.13(e) because they were primarily and directly used in the transmission of television information. The fact that the converters also had non-transmission functions did not change the converter's primary and direct use. Remotes were not exempt from taxation because they did not by definition transmit television information. Late fees and underpayment penalties were reasonable for the failure to remit sales and use tax on the remotes.

(23 pages)

LOCAL PROPERTY TAX - PROPERTY TAX ASSESSMENT - VALUATION - OFFICE BUILDING

Tax Court; Venture 17 v. Hasbrouck Heights; Docket No. 000844-2009, opinion by Andresini, J.T.C., decided January 28, 2013. For plaintiff - Steven R. Irwin (The Irwin Law Firm, P.A.; attorney); for defendant - Steven D. Muhlstock (Gittleman, Muhlstock & Chewcaskie, L.L.P.; attorney).

Plaintiff, Venture 17, LLC, the owner of a multi-tenant office building located in Defendant borough, Hasbrouck Heights, challenged the local property tax assessment for tax year 2009. In valuing the office building, the Tax Court found the sale of the subject property as an unreliable indicator of market value. Instead, the Tax Court analyzed the expert appraisers' competing capitalized income approaches, making its own independent determination of value. The Tax Court reduced the assessment.

(30 Pages)

LOCAL PROPERTY TAX - PROPERTY TAX ASSESSMENT - VALUATION - NURSING HOME

Tax Court; Regent Care v. Hackensack City; Docket Nos. 004748-2007, 004605-2008, 00497-2009, 006814-2010, opinion by Andresini, J.T.C., decided January 28, 2013. For plaintiff - Amber N. Heinz (The Irwin Law Firm, P.A.; attorney); for defendant - Donald J. Lenner, attorney.

Plaintiff, Regent Care Center, Inc., the owner of a nursing home built in 1988 located in Defendant city, Hackensack, challenged the local property tax assessment for tax years 2007-2010. In valuing the nursing home, the parties came to a number of stipulations, ultimately leaving the Tax Court to determine entrepreneurial profit and depreciation. The Tax Court accepted Plaintiff's expert's calculation for entrepreneurial profit because the facility project was built for an owner-occupier. The Tax Court found the older nursing home entitled to functional obsolescence but that it does not suffer from economic obsolescence. The Tax Court ultimately reduced the assessment.

(22 Pages)

LOCAL PROPERTY TAX

Tax Court: City of East Orange, et al. v. Township of Livingston, et al., Docket No. 000007-2012; opinion by Sundar, J.T.C., decided January 31, 2013. For plaintiff - Aaron Mizrahi (Schwartz Simon Edelstein & Celso, L.L.C., attorney); for defendant - Anthony J. Marchese (Nowell, Amoroso, Klein, Bierman, P.C., attorney).

Held: The Tax Court lacked subject-matter jurisdiction to determine the validity of the quantum of local property tax assessments for tax years 2009 and 2010 because plaintiffs failed to file timely challenges to those assessments in the Tax Court. Instead, plaintiffs waited until Defendant issued a tax sale certificate, and then filed a complaint in the Superior Court of New Jersey to void the certificate. Although Defendants mailed the 2009 assessment notices to incorrect addresses, plaintiffs received actual notice of the same upon receipt of the tax bills but did not file a complaint and seek excusal on equitable grounds of lack of timely notice. For tax year 2010, plaintiffs received timely assessment notices at the correct address yet failed to file a timely challenge in the Tax Court. Plaintiffs' allegations that the assessments were grossly excessive thus erroneous and unconstitutional, and further that portions of the subject property were statutorily tax-exempt as being used for public purposes, do not waive or toll the statute of limitations. However, the Tax Court will decide the merits of plaintiffs' allegation that the proposed tax certificate sale violated the New Jersey Green Acres Land Acquisition and Recreation Opportunities Act, N.J.S.A. 13:8A-35 et seq. because this claim was timely raised in the Superior Court (which transferred the matter to the Tax Court). Until resolution of this issue, the stay and injunction against proceeding with the tax sale will continue.

(25 Pages)