STATE TAXATION - TAX COURT JURISDICTION – TIME IN WHICH TO CURE DEFICIEINT PLEADINGS – RELAXATION OF COURT RULES

Tax Court: Mark Sahaya v. Director, Division of Taxation; Docket No. 015655-2009; opinion by DeAlmeida, P.J.T.C., decided September 1, 2015, reissued for publication September 24, 2015. For plaintiff – Joseph M. Pinto (Polino and Pinto, P.C., attorneys); for defendant – Michael J. Duffy (John J. Hoffman, Acting Attorney General of New Jersey, attorney).

The court relaxes R. 1:5-6(c) to extend the 10-day period provided in the rule to cure deficient pleadings. Plaintiff's initial timely filing with the Tax Court, although deficient because it did not include a Complaint, Case Information Statement, or the correct filing fee, was sufficiently detailed to establish jurisdiction to review the Director, Division of Taxation's assessment of gross income tax. On motion by plaintiff, the 10-day period to cure the deficiencies in his initial filing is extended, pursuant to R. 1:1-2, for an additional 10 days, given the unusual circumstances present here and the lack of harm to the Director or interference with the efficient administration of justice.

(10 Pages)

STATE TAXATION - CORPORATION BUSINESS TAX

Tax Court: Springs Licensing Group, Inc. v. Director, Div. of Taxation, Docket No. 010001-2010; opinion by Sundar, J.T.C., decided August 14, 2015; reissued for publication: September 23, 2015. For plaintiff – Richard C. Kariss and Matthew C. Decker (Alston & Bird, L.L.P., attorneys); for defendant – Michael J. Duffy (John Jay Hoffman, Acting Attorney General of New Jersey, attorney).

Held: Defendant correctly required plaintiff, a non-domestic company, to file Corporation Business Tax ("CBT") returns for tax years 2002 and 2003 and report royalty income received from its parent, a foreign company doing business in New Jersey. Although the parent company had added-back the deducted royalty payments on the parent's CBT returns under N.J.S.A. 54:10A-4.4, that law did not exempt or immunize plaintiff's subjectivity to CBT under N.J.S.A. 54:10A-2 when it was undisputed that plaintiff is subject to CBT on royalty income pursuant to Lanco, Inc. v. Director, Div. of Taxation, 21 N.J. Tax 200 (Tax 2003), rev'd, 379 N.J. Super. 562 (App. Div. 2005), aff'd, 188 N.J. 380 (2006), cert. denied, 551 U.S. 1131 (2007). Plaintiff's claims of alleged double taxation of royalty payments are addressed by N.J.S.A. 54:10A-4.4 (at the payor level) and/or N.J.S.A. 54:10A-8 (at the payor or payee level). The court therefore granted defendant's motion for partial summary judgment.

(17 Pages)

LOCAL PROPERTY TAXATION - TAX EXEMPT PROPERTY – HOSPITAL USE EXEMPTION – PROFIT TEST – APPLICATION OF N.J.S.A. 54:4-3.6

Tax Court; AHS Hospital Corp., d/b/a Morristown Memorial Hospital v. Town of Morristown; Docket Nos. 010900-2008, 010901-2008, 000406-2008; opinion by Bianco, J.T.C., decided June 25, 2015. For plaintiff - Michael S. Bubb and Christopher L. Deininger (Bubb, Grogan & Cocca, LLP, attorneys), and Kenneth J. Norcross and Nicole A. Bayman (Drinker Biddle & Reath, LLP, attorneys); for defendant - Martin Allen, Jorge A. Sanchez, and Allison L. Siegel (DiFrancesco, Bateman, Coley, Yospin, Kunzman, Davis, Lehrer & Flaum, P.C., attorneys).

The Tax Court found that the Subject Property was operated for a profit-making purpose, with a limited exception to certain areas. Consequently, the Hospital failed to satisfy the profit test as set forth in Paper Mill Playhouse, 95 N.J. 503 (1984). The Hospital was therefore precluded from property tax exemption for tax years 2006, 2007, and 2008 pursuant to N.J.S.A. 54:4-3.6.

(92 Pages)

LOCAL PROPERTY TAX – COMPLIANCE PLAN – SQUARE CORNERS DOCTRINE - DISCRIMINATION.

Tax Court: City of Elizabeth v. 264 First Street, LLC, et als.; Docket No. 011716-2014*, opinion by Novin, J.T.C., decided April 23, 2015. For plaintiff - Robert D. Blau (Blau & Blau, attorneys); for defendants - Yana Chechelnitsky (Schneck Law Group, LLC, attorneys).

The court held that prior written notice to mayor, municipal governing body, county board of taxation, and county tax administrator, and submission of a compliance plan was required before the municipal tax assessor could increase the property tax assessments on 212 Class 4C properties in the taxing district. Application of the square corners doctrine will not bar plaintiff's affirmative claims of discrimination. The overriding policy concerns being advanced by allowing a claim of discrimination to be pursued outweighs the potential pitfalls that municipal tax assessors will ignore the procedural requirements enacted under N.J.S.A. 54:4-23.

(45 pages)

(*additional docket numbers covered by this opinion
012089-2014; 011917-2014; 011914-2014; 011908-2014; 011896-2014; 011887-2014; 011881-2014; 011876-2014; 011860-2014; 011856-2014; 011729-2014; 012287-2014; 011727-2014; 011725-2014; 011724-2014; 011723-2014; 011851-2014; 011847-2014; 011845-2014; 011843-2014; 011842-2014; 011841-2014; 011836-2014; 011834-2014; 011731-2014; 011722-2014; 011720-2014; 012283-2014; 011719-2014; 011718-2014; 012287-2014; 012287-2014; 012286-2014; 012281-2014; 012278-2014; 012276-2014; 012275-2014; 012303-2014; 012304-2014; 012125-2014; 012124-2014; 012101-2014; 012123-2014; 012122-2014; 012102-2014; 012100-2014; 012097-2014; 012099-2014; 012098-2014; 012096-2014; 011728-2014)

LOCAL PROPERTY TAX – PROPERTY TAX ASSESSMENT – VALUATION – COMMERCIAL PROPERTY

Tax Court; TD Bank Successor by Merger to Commerce Bank v. City of Hackensack; Docket Nos. 007414-2009, 007421-2009, 010331-2010, 010333-2010, 003471-2011, 003478-2011, opinion by Andresini, J.T.C., decided April 22, 2015. For plaintiff – Richard B. Nashel (Nashel & Nashel, LLC; attorneys); for defendant – Levi J. Kool (O'Donnell McCord, P.C.; attorneys).

Plaintiff, TD Bank, the owner of a bank branch building located in Defendant city, Hackensack, challenged the local property tax assessment for tax years 2009-2011. The subject property included two lots on the city's tax map. The Tax Court analyzed the expert appraisers' competing capitalized income approaches, rejected Defendant's cost approach, and made its own independent determination of value. The Tax Court reduced the assessment.

(39 pages)

VETERAN'S EXEMPTION FROM REAL PROPERTY TAX – TENANCY IN COMMON

Tax Court; Hays v. Borough of Paramus; Docket No. 018743-2013, opinion by Fiamingo, J.T.C., decided April 17, 2015. Released for publication April 22, 2015. For plaintiff – George J. Singley (Singley & Gindele, Attorneys); for defendant – David B. Bole (Winne, Dooley & Bole, P.C.).

Plaintiff, Joan Hays appealed the decision of the Bergen County Board of Taxation affirming the Borough's assessment of the subject property. After trial, the court found that the plaintiff was the surviving spouse of a 100% disabled veteran who qualified for the veteran's exemption from real property tax under N.J.S.A. 54:4-3.30(b); that the determination of the Assessor to include in the curtilage over which the exemption extended the same area as a typical residential lot was reasonable in the absence of reliable evidence by plaintiff of the land reasonably necessary for plaintiff's enjoyment of the dwelling; that the proportionate interest owned by the deceased veteran as a tenant in common qualified for the exemption available to plaintiff as his surviving spouse; and that the interest of the plaintiff as beneficiary of the trust to which the deceased veteran had devised his interest as tenant in common qualified as "ownership" for purposes of the statute (to the extent of the proportionate tenancy in common interest) but the interest owned by the plaintiff as tenant in common did not qualify for the exemption.

(20 pages)

LOCAL PROPERTY TAXATION – PROPERTY TAX ASSESSMENT – VALUATION

Tax Court; City of South Amboy v. Karpowicz et al.; Docket Nos. 000167-2012, 000168-2012, opinion by Sundar, J.T.C., decided March 25, 2015. For plaintiff – David Lanza (Lanza & Lanza, L.L.P., attorney); for defendants – Edyta Karpowicz and Zenon Karpowicz (Self-Represented).

Plaintiff, City of South Amboy, ("City") appealed the judgment of the Middlesex County Board of Taxation which reduced the City's omitted assessments for tax years 2010 and 2011 placed upon the improvement, a two-family home, owned by defendants to $0. The two-family home had been damaged by a fire in 2005; had lain vacant until defendants repaired and renovated the same in 2012; and received a certificate of occupancy in 2013. The City contended that the building was improperly "omitted" from the tax lists when its value was placed at $0 as of the relevant valuation dates for tax years 2010 and 2011. The court found that this reason is not a valid basis for resort to the omitted assessment procedure. The City could have, but did not, file a regular appeal challenging the $0 value placed on the relevant valuation dates. Because of this ruling, the court did not examine the evidence or credibility of the City's methodology or conclusion that the improvement value for each tax year under the sales comparison approach, and after deduction for repair costs, should be $129,100 and $125,700 respectively. The court affirmed the Middlesex County Board's judgments and dismissed the City's complaints with prejudice.

(12 Pages)

TAX EXEMPT PROPERTY – RELIGIOUS USE EXEMPTION – APPLICATION OF N.J.S.A. 54:4-3.6.

Tax Court; Borough of Hamburg v. Trustees of the Presbytery of Newton; Docket No. 010111-2013; opinion by Bianco, J.T.C., decided February 11, 2015. Released for publication: March 2, 2015. For plaintiff – Richard J. Clemack, Esq. (Law Office of Richard J. Clemack, attorney); for defendant – Aaron M. Wilson, Esq. (Law Office of Michael A. Vespasiano, attorney).

Plaintiff appealed the judgment of the County Board of Taxation granting property tax exemption to defendant, contending that the property was not actually used for religious purposes pursuant to N.J.S.A. 54:4-3.6. Defendant used the property to store religious artefacts and goods used in charitable mission work. The Tax Court found that this use of the property was reasonably necessary for defendant's religious purpose, thereby satisfying the standard for exemption articulated in Roman Catholic Archdiocese of Newark v. East Orange City, 18 N.J. Tax 649 (App. Div. 2000). The Tax Court concluded that the property was actually used for defendant's religious purpose, and therefore the property qualified for exemption under N.J.S.A. 54:4-3.6.

(12 Pages)

TRANSFER INHERITANCE TAX – COMPUTATION OF INTEREST, LATE PAYMENT PENALTY, AND STATUTORY TAX AMNESTY PENALTY – APPLICATION OF N.J.S.A. 54:53-19; 54:49-11(a); and N.J.A.C. 18:2-2.7.

Tax Court; De Rosa v. Dir., Div. of Taxation; Docket No. 011413-2011; opinion by Bianco, J.T.C., decided January 22, 2015. For plaintiff – Alan R. Adler (Law Office of Alan R. Adler, attorney); for defendant – Heather Lynn Anderson (John J. Hoffman, Attorney General of New Jersey, attorney).

In the Tax Court's previous ruling in this matter, the court affirmed the Director's higher assessment of plaintiff's New Jersey transfer inheritance tax, determining that New Jersey law requires tax to be calculated according to the terms of a probated will, and not according to the terms of a subsequent settlement agreement. After finding that New Jersey law on this issue is clear and unequivocal, the Tax Court concluded that plaintiff did not have reasonable cause pursuant to N.J.S.A. 54:49-11(a) and N.J.A.C. 18:2-2.7 for the underpayment of his tax obligation. Accordingly, it was within the discretion of the Director to deny plaintiff qualification for reduced interest under New Jersey's 2009 Tax Amnesty program established by N.J.S.A. 54:53-19, and it was further within the discretion of the Director to assess late payment penalties and statutory tax amnesty penalties.

(13 pages)

LOCAL PROPERTY TAX – VALUATION OF CONTAMINATED PROPERTY – NOMINAL ASSESSMENT.

Tax Court: Methode Electronics, Inc. v. Township of Willingboro; Docket Nos. 019012-2010; 014098-2011, opinion by DeAlmeida, P.J.T.C., decided January 22, 2015. For plaintiff - Herbert B. Bennett (Sokol, Behot & Fiorenzo, attorneys); for defendant - Dean R. Wittman (Zeller & Wieliczko, LLP, attorneys).

The court held that a nominal assessment is appropriate for the subject property for local property tax purposes due to: (1) extensive contamination at the subject property and migration of that contamination to neighboring properties; (2) wide-spread presence of remediation and monitoring equipment, and a concrete vapor cap, on the small parcel; (3) severe limitations on the development potential of the property; (4) indefinite duration of continuing remediation and monitoring efforts; and (5) continuing threat posed by emission of toxic vapors from the property.

(22 pages)

CORPORATION BUSINESS TAX – ADD BACK OF FOREIGN STATE UTILITIES TAXES WHEN CALCULATING ENTIRE NET INCOME SUBJECT TO TAX.

Tax Court: Duke Energy Corporation v. Director, Division of Taxation; Docket No. 010448-2008, opinion by DeAlmeida, P.J.T.C., decided December 2, 2014. For plaintiff - Mitchell A. Newark and Craig B. Fields, of the New York bar, admitted pro hac vice (Morrison & Foerster, LLP, attorneys); for defendant - Marlene G. Brown (John J. Hoffman, Acting Attorney General of New Jersey, attorney).

The court held that N.J.S.A. 54:10A-4(k)(2)(C) does not require the taxpayer, when calculating its entire net income subject to Corporation Business Tax, to add back to its federal taxable income an amount equal to the taxes it paid to North Carolina and South Carolina related to the taxpayer's sale of electricity and related services.

LOCAL PROPERTY TAX – PROPERTY TAX ASSESSMENT – CHAPTER 91 – DEFICIENCY IN NOTICE

Tax Court; 440 Rt 17 Ptrns, LLC v. Borough of Hasbrouck Heights; Docket No. 008713-2014, opinion by Andresini, J.T.C., decided December 2, 2014. For plaintiff – John J. Coats and Daniel J. Pollack (Brach Eichler, LLC, attorneys); for defendant – Ralph W. Chandless, Jr. (Chandless, Weller & Kramer, attorneys).

Defendant municipality, Hasbrouck Heights, moved to dismiss Plaintiff's complaint for failure to provide responses to the assessor's Chapter 91 request. Plaintiff alleged a defect existed in the assessor's request due to his failure to make the request with sufficient time to allow the 45-day period established by N.J.S.A. 54:4-34 to pass before the submission of the assessment list to the county by January 10. The Tax Court accepted Plaintiff's argument because the assessor was not granted an extension for submission of the assessment list by a formal action of the Bergen County Board of Taxation and denied Defendant's motion to dismiss.

STATE TAXATION - CORPORATE BUSINESS TAX – RELATED PARTY INTEREST ADD-BACK

Tax Court; Morgan Stanley & Co, Inc. v. Dir., Div. of Taxation; Docket No. 007557-2007, opinion by Fiamingo, J.T.C., decided October 29, 2014. For plaintiff – David J. Shipley, Esq. (McCarter & English, LLP, attorneys); for defendant – Marlene G. Brown (John J. Hoffman, Acting Attorney General of New Jersey, attorney).

Plaintiff, Morgan Stanley & Co., Incorporated, appealed the final determination of the defendant disallowing plaintiff's amended return deducting its related party interest pursuant to N.J.S.A. 54:10A-4(k)(2)(I) . On summary judgment, plaintiff contended that it was entitled to deduct the related party interest pursuant to both the subject to tax exception and the unreasonable exception to the related party interest add back provision. Plaintiff argued that the unreasonable exception only required a showing that the applicable transactions had non-tax business motives and economic substance. Defendant cross-moved for summary judgment arguing: that plaintiff had not satisfied the subject to tax exception; that something more than a non-tax business motive and economic substance is necessary to qualify for the unreasonable exception; and that because plaintiff had failed to demonstrate that tax had been paid in any jurisdiction on the interest income, it was not entitled to deduct the related party interest.

The court held that plaintiff failed to demonstrate that it was entitled to the subject to tax exception and that something more than a non-tax business purpose and economic substance is required to qualify for the unreasonable exception to the related party interest add back provision. The court confirmed that the determination of whether a transaction qualified for the unreasonable exception required an examination of all of the facts and circumstances of the transactions and that defendant had failed to conduct such an examination. The Court granted summary judgment for plaintiff and denied defendant's cross-motion for summary judgment.

(28 pages)

LOCAL PROPERTY TAX – EXEMPTION FROM ROLL-BACK TAX

Tax Court: New Jersey Turnpike Authority v. Township of Monroe, Docket No. 017197-2011; opinion by Sundar, J.T.C., decided February 14, 2014; released as published opinion October 8, 2014. For plaintiff – Russell J. Passamano (DeCotiis, Fitzpatrick & Cole, L.L.P., attorneys); for defendant – Richard A. Rafanello and Gregory B. Pasquale (Shain, Schaffer & Rafanello. P.C., attorneys).

Held: Plaintiff purchased the subject property as part of its mitigation obligation to the New Jersey Department of Environmental Protection since it had disturbed environmentally protected lands in connection with a Turnpike widening project. N.J.S.A. 54:4-23.8 imposes a roll-back tax "[w]hen land which is in agricultural or horticultural use and is being valued, assessed and taxed under the provisions of [the Farmland Assessment Act], is applied to a use other than agricultural or horticultural." However, land "acquired by," among others, "the State" or "a local government unit" for "recreation and conservation purposes" is excepted from the rollback imposition. The court found that plaintiff is not a "local government unit" as that term is defined in the implementing statutes, and therefore, is not exempt from the rollback imposition. Both parties' summary judgment motions are denied but parties are directed to file supplemental briefs on whether plaintiff can be considered "the State" for purposes of the rollback exemption under N.J.S.A. 54:4-23.8.

(15 Pages)

GROSS INCOME TAX – CREDIT FOR TAX OF ANOTHER STATE

Tax Court; Criticare, Inc. and Marina Shakour Haber v. Dir., Div. of Taxation; Docket No. 008253-2013, opinion by Fiamingo, J.T.C., decided July 8, 2014; released October 7, 2014. For plaintiff – Jeremy Klausner (Agostino & Associates, P.C., attorneys); for defendant – Ramanjit K. Chawla (John J. Hoffman, Acting Attorney General of New Jersey, attorney).

Plaintiff, Marina Shakour Haber, sole shareholder of Criticare, Inc., a New Jersey S corporation, challenged the defendant's calculation of the credit due for taxes imposed by New York State on the income passed through to plaintiff from the corporation. Plaintiff and defendant cross-moved for summary judgment. The court granted defendant's motion and denied plaintiff's motion. The court held that the limit on the credit against New Jersey Gross Income Tax for taxes imposed by a foreign jurisdiction on income from an S corporation is to be calculated in accordance with the provisions of the New Jersey Business Corporation Act and not with reference to the amount of income actually taxed by the foreign jurisdiction. Specifically in determining the amount of "S corporation income allocated to" New Jersey for purposes of the limitation of N.J.S.A. 54A:4-1(c), the allocation provisions of the NJ Business Corporation Act are to be applied.

(13 pages)

SUMMARY JUDGMENT – PENNSYLVANIA GROSS RECEIPTS TAX AND PENNSYLVANIA CAPITAL STOCK TAX ARE NOT REQUIRED TO BE ADDED BACK TO ENTIRE NET INCOME WHEN DETERMINING NEW JERSEY CORPORATE BUSINESS TAX LIABILITY

Tax Court: PPL Electric Utilities Corporation v. Director, Division of Taxation, Docket Number 000005-2011; opinion by Brennan, J.T.C., decided October 2, 2014. For plaintiffs – Kenneth J. Norcross for plaintiff (Drinker, Biddle & Reath, LLP, attorneys; Nicole A. Bayman, on the briefs); for defendant – Michael J. Duffy for defendant (John J. Hoffman, Acting Attorney General of New Jersey, attorney).

Court determined that the Pennsylvania Gross Receipts Tax is an excise tax and not a franchise tax and therefore is not subject to N.J.S.A. 54:10A-4(k)(2)(c), which requires the add-back of state taxes based on income or profit, business activity or business presence, to entire net income when determining New Jersey Corporate Business Tax liability. Similarly, the Pennsylvania Capital Stock Tax is a property tax and not a tax based on income or profits, business presence or business activity and therefore no add-back is required.

(15 Pages)

CORPORATION BUSINESS TAX – FEDERAL BONUS DEPRECIATION UNCOUPLING – ADJUSTMENTS TO FEDERAL BASIS PURSUANT TO MORONEY v. DIRECTOR, DIV. OF TAXATION, 376 N.J. SUPER. 1 (APP. DIV. 2005), WHEN CALCULATING GAIN FROM THE DISPOSITION OF CAPTIAL ASSETS – THE THROW-OUT RULE.

Tax Court: Toyota Motor Credit Corporation v. Director, Division of Taxation; Docket No. 002021-2010, opinion by DeAlmeida, P.J.T.C., decided August 1, 2014. For plaintiff - Kyle O. Sollie (Reed Smith, LLP, attorneys; Jennafer N. Mesigian, on the briefs); for defendant - Jill C. McNally (John J. Hoffman, Acting Attorney General of New Jersey, attorney).

The court held that (1) New Jersey's decoupling from the federal bonus depreciation statute enacted in the wake of the events of September 11, 2001, 26 U.S.C.A. §168, was effective beginning with plaintiff's fiscal year commencing October 1, 2002 and applies to vehicles purchased after September 10, 2001, even if they were purchased prior to the start of that fiscal year; (2) the holding in Moroney v. Director, Div. of Taxation, 376 N.J. Super. 1 (App. Div. 2005), concerning adjustments to federal basis when determining gain from the sale of property for Gross Income Tax purposes, applies to the calculation of plaintiff's "entire net income" from the sale of its property under the CBT Act; and (3) the Director's removal under the Throw-Out Rule, N.J.S.A. 54:10A-6(B)(6), as amended by L. 2002, c. 40, §8, of plaintiff's receipts sourced to Nevada, South Dakota, and Wyoming from the denominator of the receipts fraction used to determine plaintiff's CBT liability was erroneous.

(34 Pages)

LOCAL PROPERTY TAX – STANDING TO CHALLENGE ASSESSMENT – COURT APPOINTED RENT RECEIVER IS TAXPAYER AGGRIEVED BY ASSESSMENT WITHIN THE MEANING OF N.J.S.A. 54:3-21.

Tax Court: NNN Lake Center, LLC by Onyx Equities, LLC, Receiver v. Township of Evesham; Docket No. 005552-2014, opinion by DeAlmeida, P.J.T.C., decided July 28, 2014. For plaintiff Joseph G. Buro (Zipp & Tannenbaum, LLC; attorneys); for defendant Karen M. Murray (Caplan, Valenti & Murray, P.C., attorneys).

The court held that a court appointed rent receiver has a sufficient stake in the proper assessment of the real property it has been authorized to operate on behalf of a mortgagee after a default by the property owner on a promissory note to file a Tax Court complaint challenging the assessment on the property for local property tax purposes. As a result of this holding, the court denied the municipality's motion to dismiss the Complaint for want of jurisdiction pursuant to N.J.S.A. 54:3-21.

(13 pages)

TRANSFER INHERITANCE TAX - APPLICATION OF N.J.S.A. 54:34-1

Tax Court; Peter De Rosa, Executor v. Director, Division of Taxation; Docket No. 011413-2011, opinion by Bianco, J.T.C., decided July 28, 2014. For plaintiff – Alan R. Adler (Law Office of Alan R. Adler; attorneys); for defendant – Heather Lynn Anderson (John J. Hoffman, Acting Attorney General of New Jersey; attorney).

Defendant, the Director of the Division of Taxation, ("Director") moved for summary judgment on Plaintiff's, Peter De Rosa's ("Mr. De Rosa") complaint that challenged the amount of Transfer Inheritance Tax owed pursuant to N.J.S.A. 54:34-1. Mr. De Rosa filed a cross-motion for summary judgment. The sole legal issue before the court was whether the Director must consider a settlement agreement, which resolved a will contest and affected the transfers to beneficiaries, when calculating the Transfer Inheritance Tax. Following the holding of Pope v. Kingsley, 40 N.J. 168 (1963), agreements resolving will contests do not affect the assessment of Transfer Inheritance Tax, which is made based on the transfers as indicated in the will. Accordingly, the court granted the Director's Motion for Summary Judgment and denied Mr. De Rosa's Cross-Motion.

(9 Pages)

EMPLOYER WITHHOLDING TAX - APPLICATION OF N.J.S.A. 54A:7-1

Tax Court; Daniel P. McGlone v. Director, Division of Taxation; Docket No. 006378-2003, opinion by Bianco, J.T.C., decided July 28, 2014. For plaintiff – Bernard M. Reilly (Bernard M. Reilly, LLC, attorneys); for defendant – Jeremy M. Vaida (John J. Hoffman, Acting Attorney General of New Jersey, attorney).

Defendant, the Director of the Division of Taxation, ("Director") moved for summary judgment on Plaintiff's, Daniel McGlone's ("Mr. McGlone") complaint that challenged the amount and validity of Gross Income Withholding ("GIT-ER") taxes assessed to Mr. McGlone as a responsible person of T.J. McGlone & Co. Inc. "the Company") pursuant to N.J.S.A. 54A:7-1. In 1988, 1989, and 1990, the Company failed to file GIT-ER year-end reconciliation returns. In 1990, the company entered into bankruptcy pursuant to Chapter 7 of the Bankruptcy Code. The bankruptcy proceedings concluded in 1997. In 2001, the Director advised Mr. McGlone that the Company's GIT-ER returns were still missing and requested they be filed, which Mr. McGlone did. The Director subsequently made a timely assessment of Mr. McGlone as a responsible person of the Company. The court found that although the Company had completely the Chapter 7 bankruptcy proceedings, GIT-ER taxes are not dischargeable in bankruptcy. Because Mr. McGlone did not challenge his status as a responsible person and did not provide any evidence to generate a genuine issue of material fact as to the information provided on the 2001 returns, the court granted the Director's Motion for Summary Judgment.

(7 Pages)

LOCAL PROPERTY TAX – EXEMPTION FROM ROLL-BACK TAX

Tax Court: New Jersey Turnpike Authority v. Township of Monroe, Docket No. 017197-2011; opinion by Sundar, J.T.C., decided July 2, 2014. For plaintiff – Russell J. Passamano (DeCotiis, Fitzpatrick & Cole, L.L.P., attorneys); for defendant – Richard A. Rafanello and Gregory B. Pasquale (Shain, Schaffer & Rafanello. P.C., attorneys).

Held: N.J.S.A. 54:4-23.8 imposes a roll-back tax "[w]hen land which is in agricultural or horticultural use and is being valued, assessed and taxed under the provisions of [the Farmland Assessment Act], is applied to a use other than agricultural or horticultural." However, the same statute exempts land "acquired by," among others, "the State" or "a local government unit" and the acquisition is for "recreation and conservation purposes." It is undisputed that plaintiff purchased the subject property as part of its mitigation obligation to the New Jersey Department of Environmental Protection since it had disturbed environmentally protected lands in connection with a Turnpike widening project. In an earlier unpublished opinion, the court found that plaintiff was not a "local government unit" as that term was defined, and invited the parties to argue whether plaintiff could be deemed "the State" for purposes of the roll-back exemption statute. In this decision, the court finds that plaintiff does not fit within the meaning of that term either. Since plaintiff does not satisfy one of the three criteria for the roll-back exemption, the court does not analyze whether plaintiff's purchase for mitigation purposes qualifies as an acquisition for "conservation and recreation" purposes. Plaintiff's motion for summary judgment is denied. Defendant's motion for summary judgment with dismissal of the complaint is granted.

(11 Pages)

LOCAL PROPERTY TAXATION – PROPERTY TAX ASSESSMENT

Tax Court; 510 Ryerson Road, Inc. v. Borough of Lincoln Park; Docket No. 000649-2012, opinion by Bianco, J.T.C., decided June 25, 2014. For plaintiff – Philip D. Neuer (Law Office of Philip D. Neuer, P.C., attorneys); for defendant – Jacquelin P. Gioioso (The Buzak Law Group, LLC, attorneys).

Defendant, Borough of Lincoln Park ("Lincoln Park"), moved to dismiss Plaintiff's, 510 Ryerson Road, Inc. ("Ryerson"), 2012 tax appeal for failure to respond to a request for information pursuant to N.J.S.A. 54:4-34, also known as Chapter 91. The court conditionally granted the motion subject to a reasonableness hearing as discussed in Ocean Pines, Ltd. v. Borough of Point Pleasant, 112 N.J. 1 (1988). To prepare for the hearing, Ryerson sought any information that Lincoln Park's assessor relied on to assess Ryerson's warehouse/office building ("Subject Property"), including Chapter 91 information for other similar properties. Lincoln Park objected to this disclosure on the basis that Chapter 91 information was confidential. The court found that nothing in the language of Chapter 91 made the information confidential or prevented its discovery, particularly in light of the Supreme Court's holding in Ocean Pines that a taxpayer "shall be entitled to discovery of any information relied on by the assessor in arriving at the subject valuation," and ordered disclosure of the Chapter 91 information subject to a protective order. At the reasonableness hearing, Lincoln Park's assessor credibly testified to the data he relied upon and the methodology he used to arrive at the assessment for the Subject Property. Ryerson failed to overcome its burden to demonstrate that either the data or methodology used were unreasonable, and the court dismissed the case.

(12 Pages)

STATE INHERITANCE TAX – QUALIFICATION OF BENEFICIARY AS DOMESTIC PARTNER

Tax Court; Claudette Lugano v Dir., Div. of Taxation; Docket No. 011442-2013, opinion by Fiamingo, J.T.C., decided May 28, 2014. For plaintiff - Andrew M. Epstein (Lampf, Lipkind, Prupis & Petigrow, P.A., attorneys); for defendant – Heather Lynn Anderson (John J. Hoffman, Acting Attorney General of New Jersey, attorney).

Plaintiff, beneficiary of pension benefits payable by the Federal Reserve Bank of New York as a result of the death of decedent Lovi, challenged the defendant's assessment of inheritance tax to her as a Class D beneficiary. Plaintiff made a motion for summary judgment, and defendant made a cross-motion for same. The court granted defendant's motion for summary judgment and denied summary judgment in favor of plaintiff, holding plaintiff, having failed to comply with the provisions of the Domestic Partnership Act, was not a domestic partner entitled to exemption as a Class A beneficiary for New Jersey Transfer Inheritance Tax purposes; benefits payable under the Federal Reserve Bank Pension System were not entitled to exemption from tax.

(13 pages)

STATE INHERITANCE TAX – TAXABILITY OF DECEDENT'S PERSONAL RESIDENCE TRUST AND GRANTOR RETAINED UNITRUST

Tax Court; Andrew Gray, III, Executor of the Estate of Beatrice Jochman v Dir., Div. of Taxation; Docket No. 000120-2013, opinion by Andresini, J.T.C., decided May 5, 2014. For plaintiff – Raphael G. Jacobs (Law Offices of Jacobs & Bell, P.A., attorney); for defendant – David B. Bender (John J. Hoffman, Acting Attorney General of New Jersey, attorney).

Plaintiff, executor for the estate of decedent Jochman, challenged the defendant's decision to include the value of a Qualified Personal Residence Trust and Grantor Retained Unitrust ("Trusts") in decedent's estate when making an assessment for inheritance taxes. Those Trusts were created almost seven years prior to decedent's death but expired within one year of decedent's death. Plaintiff made a motion for summary judgment, and defendant made a cross-motion for same. The court granted plaintiff's motion for summary judgment and denied summary judgment in favor of defendant, holding there was no basis to include the value of the Trusts under the New Jersey Transfer Inheritance Tax as transfers made in contemplation of death or those transfers intended to take effect at or after death.

(20 pages)

SALES AND USE TAX – PROCEDURAL SUFFICIENCY OF REFUND CLAIM – REPAYMENT OBLIGATION OF N.J.S.A. 54:32B-20(a) – PROHIBITION ON REFUND CLAIMS ON BEHALF OF A CLASS PURSUANT TO N.J.S.A. 54:49-14(c).

Tax Court: New Cingular Wireless PCS, LLC v. Director, Div. of Taxation; Docket No. 000003-2012; opinion by DeAlmeida, P.J.T.C., decided February 21, 2014. For plaintiff – Margaret C. Wilson (Reeder Wilson, LLP, attorneys); for defendant – Jill C. McNally (John J. Hoffman, Acting Attorney General of New Jersey, attorney).

The court reverses the Director, Division of Taxation's rejection of plaintiff's sales tax refund claim on procedural grounds. The court concludes that no reasonable basis exists for the Director's determination that plaintiff's deposit into an Escrow Account on behalf of its customers under the supervision of a federal court judge pursuant to a settlement agreement of class action claims does not constitute repayment of erroneously collected sales tax to plaintiff's customers pursuant to N.J.S.A. 54:32B-20(a). In addition, the court concludes that plaintiff's sales tax refund claim does not constitute a claim on behalf of a class prohibited by N.J.S.A. 54:49-14(c).

(28 Pages)

STATE TAXATION – MARTIAL DEDUCTION - ESTATE TAX

Tax Court: Estate of Lillian Garis Booth v. Director, Div. of Taxation, Docket No. 015173-2012; opinion by Sundar, J.T.C., decided February 11, 2014. For plaintiff – Angela C. Titus McEwan (Archer & Greiner P.C, attorneys); for defendant – Heather Lynn Anderson (John Hoffman, Acting Attorney General of New Jersey, attorney).

Held: Defendant's disallowance of the federally allowed marital deduction in computing the New Jersey estate tax is proper. Although the de-coupled New Jersey estate tax is still computed with reference to the federal credit for State death taxes effective as of December 31, 2001, defendant is not barred from examining federally allowed estate tax deductions to ensure the same are in accord with the federal law as of that date. Since the amount of the federal State death tax credit is impacted by the amount of the federally allowed marital deduction; the marital deduction is only allowed to a "spouse;" and determination of a "spouse" is controlled only by State law, defendant is not automatically bound by the Internal Revenue Service's ("IRS") determination that a New Jersey resident decedent had a common-law marriage with another person who was paid by the decedent's Estate in settlement of probate litigation. Defendant would be bound by an IRS' determination if it was based upon a court's finding or recognition, on the merits, of a common-law marriage status, or upon the IRS' analysis or application of state law. In the present case, neither of these two elements was present. Therefore, defendant's disallowance of the federally allowed marital deduction is proper. However, defendant improperly disallowed a portion of the executors' commission expenses by relying upon the Inheritance Tax regulations. Plaintiff's motion for partial summary judgment is denied in part, and defendant's cross-motion for partial summary judgment is granted in part.

(31 Pages)

CORPORATION BUSINESS TAX – QUALIFICATION AS INVESTMENT COMPANY – SATIFACTION OF THREE-PRONGED BUSINESS TEST

TAX COURT: Regent Corporation of Union, Inc. v. Director, Division of Taxation; Docket Number: 013971-2010; opinion by Nugent, J.T.C., decided January 17, 2014. For plaintiff – Bruce E. Mantell (Mantell, Prince & Reynolds, attorneys); for defendant – Michael J. Duffy (John J. Hoffman, Acting Attorney General of New Jersey, attorney).

The court here considers the parties' cross-motions for summary judgment regarding whether N.J.C.A. 18:7-1.15, a regulation promulgated by the Division to clarify the statutory requirements for qualification of an investment company under N.J.S.A. 54:10A-4(f), is valid as a reasonable interpretation of the statute. An investment company is granted preferential tax treatment under the statute. In this matter, the Division denied plaintiff's election as an investment company based on plaintiff's failure to meet the deduction test, one part of a three-pronged business test set forth in N.J.C.A. 18:7-1.15. Plaintiff argues the deduction test constitutes impermissible overreaching by the Division and that it should qualify for investment company status based on its satisfaction of the two other prongs alone. The Division contends the regulation is a reasonable interpretation of N.J.S.A. 54:10A-4(f) in light of the statutory language and legislative intent. The court finds that the regulation constitutes a valid exercise of authority by the Division, and grants the Division's motion for summary judgment. Plaintiff's cross-motion for summary judgment is denied.

(24 Pages)

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)