CORPORATE BUSINESS TAX – INTERPRETATION OF THE "REGULAR PLACE OF BUSINESS" RULE -DEFENDANT DETERMINATION TO DENY APPORTIONMENT REVERSED WHERE PLAINTIFF TAXPAYER ESTABLISHED A REGULAR PLACE OF BUSINESS OUTSIDE OF NEW JERSEY.

Tax Court: ADP Vehicle Registration, Inc. v. Director, Div., of Taxation; Docket No. 014946-2014, opinion by Nugent, J.T.C., decided on December 11, 2018. For plaintiff – Hollis L. Hyans, admitted pro hac vice (Morrison & Foerster, L.L.P., attorneys; Steven T. Rappoport, on the briefs); for defendant – Marlene G. Brown (Gurbir S. Grewal, Attorney General of New Jersey, attorney).

The court grants plaintiff ("Taxpayer") partial summary judgement reversing defendant's ("Taxation") decision to tax 100% of Taxpayer's income, finding Taxpayer maintained a Regular Place of Business (RPOB) outside of New Jersey, as defined by N.J.A.C. 18:7-7.2. Taxpayer was a wholly-owned subsidiary of ADP, Inc., that claimed to operate as a California holding company conducting no activity, and whose sole asset was an 80% partnership interest in a California general partnership with offices in that State that operated a computerized vehicle registration service nationwide. In its analysis, the court focused on the partnership's business due to the unitary nature of the two entities. The parties' dispute centered on interpretation of the RPOB regulation where Taxpayer argued the language therein did not constitute a list of absolute requirements to be met, contrary to Taxation's strict interpretation. Based on the plain language of the regulation coupled with precedent that applied an objective standard to the RPOB analysis, the court found Taxpayer's argument to be more persuasive. On that basis, the court concluded that Taxpayer maintained an RPOB outside of the State entitling Taxpayer to apportion income away from New Jersey, pursuant to N.J.S.A. 54:10A-6.

(25 Pages)

LOCAL PROPERTY TAX – APPLICATION OF FREEZE ACT – AFFIRMATIVE WAIVER

Tax Court: 160 Chubb Properties, LLC v. Township of Lyndhurst, Docket Nos. 002442-2014, 006305-2015; opinion by Orsen, J.T.C., decided December 14, 2018. For plaintiff – Joseph G. Ragno and Robert J. Guanci (Waters, McPherson, McNeill, P.C., attorneys); for defendant – Kenneth A. Porro (Chasan, Lamparello, Mallon & Cappuzzo, P.C., attorneys).

Plaintiff, 160 Chubb Properties, LLC, sought relief under N.J.S.A. 54:51A-8 ("Freeze Act") for the 2017 tax year based on the settled and adjudged tax assessment for the 2015 base tax year. Defendant, Township of Lyndhurst, opposed application of the Freeze Act for the 2017 tax year arguing that plaintiff waived Freeze Act protection under the settlement agreement. Defendant also sought a plenary hearing arguing that plaintiff performed improvements to the property precluding Freeze Act relief. The court determined that the Freeze Act applies unless the taxpayer affirmatively waives its application. The court found that the settlement agreement did not contain an affirmative waiver, nor was any evidence offered that plaintiff agreed to limit Freeze Act protection. The court also found that defendant was not entitled to a plenary hearing since it did not make a prima facie showing that a substantial and meaningful change in value occurred to the property. The court determined that defendant's bare allegations of increased tenant occupancy; the cost of work to be performed under construction permits; and the sales price of the property were insufficient to demonstrate a change in value. Accordingly, the court granted plaintiff's motion to apply the Freeze Act to the 2017 tax year assessment.

(15 Pages)

STATE TAXATION – GROSS INCOME TAX – RESIDENT TAX CREDIT - SUBCHAPTER S CORPORATIONS

Tax Court: Patricia A. Doherty & The Estate Of James Robert Doherty, Jr. v. Director, Division Of Taxation, Docket No. 011661-2016; opinion by Cimino, J.T.C., decided August 17, 2018. For plaintiff - Robert E. Salad (Cooper, Levenson, attorneys); for defendant – Ramanjit K. Chawla (Gurbir S. Grewal, Attorney General of New Jersey, attorney).

Under the Gross Income Tax (GIT) Act, a resident of the State of New Jersey is taxed on 100% of income regardless of whether the income is generated in-state or out-of-state, or a combination thereof. Certain credits are allowed against taxes assessed on S Corporation income allocated to other states so long as that income is not allocated to New Jersey. Taxpayers sought a credit not only against income allocated to Pennsylvania, but also income allocated to New Jersey because Pennsylvania had allocated a greater share of the income to itself. Taxpayers' argument was that New Jersey would still receive its share of taxes for income allocated to New Jersey since the Pennsylvania rate is lower.

The Legislature set forth a method of credit calculation that plainly precludes a credit against income allocated to New Jersey. The Legislature did not intend to cede its authority to determine the method of allocation of income to Pennsylvania. As a result, taxpayers are only entitled to a credit for taxes that are not allocated to New Jersey in accordance with the allocation determined by New Jersey law.

(24 pages)

LOCAL PROPERTY TAX

Tax Court: Borough of Red Bank v. RMC-Meridian Health, Docket Nos. 000007-2016, 000008-2018; opinion by Sundar, J.T.C., decided July 25, 2018. For plaintiff – Martin Allen and Kevin A. MacDonald (DiFrancesco Bateman, Kunzman, Davis, Lehrer & Flaum, P.C., attorneys); for defendant – Susan Feeney and Farhan Ali (McCarter & English, L.L.P., attorneys).

Held: Plaintiff thus cannot seek to impose omitted assessments on defendant's property for two tax years under the general omitted assessment law, based on a trial court's opinion in an unrelated litigation that an unrelated hospital, which was found to be operating for profit, is not entitled to a tax exemption. Plaintiff's complaints are therefore dismissed.

(20 Pages)

LOCAL PROPERTY TAX

Tax Court: Ronald Bentz v. Township of Little Egg Harbor, Docket No. 009763-2017; opinion by Sundar, J.T.C., decided July 25, 2018. For plaintiff – Ronald Bentz, Self-Represented; for defendant - Robin La Bue (Gilmore & Monahan P.A., attorneys); for intervenor, Director, Division of Taxation – Stephen J. Colby (Attorney General of New Jersey, attorney).

Held: Plaintiff's complaint seeking to declare N.J.S.A. 54:4-8.10(a) as unconstitutional because it does not list the 1986 conflict in Libya as one of defined periods of "time of war" is dismissed. The principles of separation of powers prohibit the court from engrafting a conflict into N.J.S.A. 54:4-8.10(a) when it has not been specifically designated as such by the Legislature.

(21 Pages)

STATE GROSS INCOME TAX

Tax Court: Andrew H. Schechtel v. Director, Div. of Taxation, Docket No. 000295-2017; opinion by Sundar, J.T.C., decided July 6, 2018. For plaintiff – John L. Berger (Lowenstein Sandler, P.C.); for defendant – Ramanjit K. Chawla (Attorney General of New Jersey, attorney).

Held: Defendant's determination to disallow the reduction of plaintiff's distributive share of partnership income in 2010 by a portion of loss passed-through to plaintiff in 2009, but not used by plaintiff to offset his 2009 distributive share of partnership income, is upheld. Although I.R.C. § 465 (at risk provisions) limits the amount of passed-through loss that can be deducted in the taxable year the loss was passed through, and permits carry-forward of the excess or unused loss to future years, the same treatment is not permissible under the New Jersey Gross Income ("GIT") Act, via N.J.S.A. 54A:8-3(c), as a federal method of accounting, and due N.J.S.A. 54A:5-2, which bars loss carry-forwards. Plaintiff is also not entitled to equitably recoup the excess GIT paid in 2009 against the 2010 audited GIT because using a prior year's loss to offset/reduce the next tax year's income is not a "single transaction. However, defendant's decision to impose interest and penalties is voided. Plaintiff's summary judgment is denied except as to interest and penalties, and defendant's cross-motion for summary judgment is granted except as to interest and penalties.

(22 Pages)

LOCAL PROPERTY TAX

Tax Court: Metz Family Ltd. Partnership v. Township of Freehold, Docket No. 000877-2018; opinion by Sundar, J.T.C., decided June 28, 2018. For plaintiff – John J. Coates (Brach Eichler, L.L.C., attorneys); for defendant – Kevin A. MacDonald, and Martin Allen (DiFrancesco, Bateman, Kunzman, Davis, Lahrer & Flaum, P.C., attorneys).

Held: In municipalities located in counties participating in the Assessment Demonstration Program ("ADP"), assessors must send requests for income and expense information under N.J.S.A. 54:4-34 ("Chapter 91"), such that the 45-day response deadline ends on or before November 1 of the pre-tax year, which is the date for the assessors to submit the preliminary tax lists to the county board of taxation. Here, the defendant's request, which was sent on October 5, 2017, was defective because the response period ended after the November 1 date. Defendant's motion to dismiss plaintiff's complaint under Chapter 91 is therefore denied.

(15 Pages)

INSURANCE PREMIUM TAX – SELF-PROCURED INSURANCE

Tax Court: Johnson & Johnson v. Director, Division of Taxation and Commissioner, Department of Banking and Insurance, Docket Number 13502-2016; opinion by Brennan, J.T.C., decided June 15, 2018. For plaintiff – Michael A. Guariglia and Vlad Frants (McCarter & English, LLP, attorneys); for defendants – William B. Puskas, Jr., Deputy Attorney General (Gerber S. Grewal, Attorney General of New Jersey, attorney).

Plaintiff, Johnson & Johnson moved for summary judgment and requested a refund of self-procured insurance premium tax in the amount of $55,902,070.95, plus applicable interest. Plaintiff claimed that N.J.S.A. 17:22-6.64 limits self-procurement tax to premium payments allocated to risks only within New Jersey. Defendants, Director, Division of Taxation and Commissioner, Division of Banking and Insurance, filed a cross-motion for summary judgment and argued that the 2011 statutory amendment to N.J.S.A. 17:22-6.64 changed the method of calculation of self-procurement tax, and that it is now based on 100 percent of U.S. premiums, and not limited to an allocation of risks in New Jersey. Defendant's position is based on the Legislature's adoption of the Home State Rule as provided for and defined by the Nonadmitted and Reinsurance and Reform Act of 2010 (NRRA), which permits only the home state of an insured to tax nonadmitted insurance premiums. The Tax Court found that although the amended language of N.J.S.A. 17:22-6.64 contains certain inconsistencies, it was the Legislature's intention to adopt the NRRA's Home State Rule. Since Johnson & Johnson has its principal place of business in New Brunswick, New Jersey, it is subject to the Home State Rule and is required to remit self-procured insurance premium tax based on 100 percent of its U.S. premiums. The Tax Court denied Johnson & Johnson's motion for summary judgment and granted the cross-motion for summary judgment by the Director, Division of Taxation and Commissioner, Division of Banking and Insurance.

(33 Pages)

INTERVENTION IN REAL PRPERTY TAX APPEALS – STATUTE OF LIMITATIONS

Tax Court: Farmland Dairies, Inc. v. Borough of Wallington, Docket No.009501-2014, 004801-2015, 002499-2016, opinion by Fiamingo, J.T.C., decided June 8, 2018. For plaintiff – Peter L. Davidson (The Davidson Legal Group, L.L.C., attorneys); for defendant - Paul M. Elias (Bittinger, Elias & Triolo, P.C. Attorneys); for movant – Arthur N.Chagaris (Beattie Padovano, L.L.C., attorneys)

The Tax Court previously denied movant's motion to intervene as of right as time-barred, which decision was affirmed by the Appellate Division, but was remanded for consideration of movant's alternative argument for permissive intervention. On remand, the court finds movant's affirmative claim, being time-barred, cannot be revived via motion for permissive intervention. The court also finds that movant has no standing to intervene in the defense of the taxpayer's tax appeal. Additionally, to permit movant to intervene would unduly prejudice the rights of plaintiff taxpayer and defendant taxing district, the latter having the exclusive right to defend the tax assessments and determine the course of the litigation.

(10 Pages)

STATE TAXATION - NEW JERSEY TRANSITIONAL ENERGY FACILITY ASSESSMENT ADD-BACK PROVISION - N.J.S.A. 54:10A-4.1 – INTERPLAY BETWEEN N.J.S.A. 54:10A-4.1 AND THE CORPORATE BUSINESS TAX ADD-BACK PROVISION N.J.S.A. 54:10A-4(K)(2)(C) THROUGH ITS INCORPORATION

Tax Court; Rockland Electric Company v. Dir., Div. of Taxation; Docket No. 008111-2016; opinion by Bianco, J.T.C., decided April 30, 2018. For plaintiff – Alysse McLoughlin (McDermott Will & Emery LLP, attorneys); for defendant – Michael J. Duffy (Gurbir Grewal, Attorney General of New Jersey, attorneys).

A Corporate taxpayer, in its calculation of entire net income for Corporate Business Tax purposes, must add-back the amount of New Jersey Transitional Energy Facility Assessment deducted in arriving at federal taxable income for the taxable year within which it is paid or accrued. N.J.S.A. 54:10A-4.1.

(15 Pages)

LOCAL PROPERTY TAX

Tax Court: Gamma-Upsilon Alumni Ass'n of Kappa Sigma, Inc. v. City of New Brunswick, Docket No. 003351-2017; opinion by Sundar, J.T.C., decided April 26, 2018. For plaintiff – Zipp Tannenbaum Caccavelli, L.L.C. (Joseph G. Buro, Esq.); for defendant – Hoagland, Longo, Moran, Dunst & Doukas, L.L.P., (Joseph D. Palombit, Esq., and Emil H. Philibosian, Esq.)

Held: Defendant's motion to dismiss the complaint under N.J.S.A. 54:4-34 ("Chapter 91") is granted. Plaintiff is not exempted from responding to a Chapter 91 request merely because it is a non-profit entity which is exempt from federal income tax under I.R.C. §507(c)(7), and because the subject property it owns is used by members of a fraternity. Rather, because the subject property was being rented to fraternity members under lease agreements, it is income-producing for purposes of Chapter 91, a statute which is not controlled or governed by the Internal Revenue Code. The court also disagrees with plaintiff that a non-response to a Chapter 91 request is an affirmative defense, which if not pled in an answer to a complaint, is deemed waived. Plaintiff's other arguments that the defendant's motion should be denied as being procedurally defective or as requiring discovery, are also rejected. Plaintiff's complaint is dismissed, subject to its right to a reasonableness hearing pursuant to Ocean Pines, Ltd. v. Borough of Point Pleasant, 112 N.J. 1 (1988).

(20 Pages)

SUMMARY JUDGMENT, ENTITLEMENT AS MATTER OF LAW – STATE & LOCAL TAXES, ADMINISTRATION & PROCEDURE - REAL PROPERTY TAXES, ASSESSMENT & VALUATION - REAL PROPERTY TAXES, EXEMPTIONS - PERSONAL PROPERTY TAXES, EXEMPTIONS - LOCAL GOVERNMENTS, FINANCE - LOCAL GOVERNMENTS, PROPERTY -- STATE & TERRITORIAL GOVERNMENTS, PROPERTY – TYPES OF CONTRACTS, PERSONAL & REAL PROPERTY LEASES – LEGISLATION, INTERPRETATION – STATE DEPARTMENTS OF EDUCATION, AUTHORITY OF DEPARTMENTS OF EDUCATION - ADMINISTRATION & OPERATION, SCHOOL PROPERTY

Tax Court: Gourmet Dining, LLC v. Union Township, Kean University, and New Jersey Educational Facilities Authority; Docket Nos. 016504-2013 and 012334-2014, opinion by Novin, J.T.C., decided March 14, 2018. For Gourmet Dining, LLC and Kean University – David B. Wolfe (Skoloff & Wolfe, P.C., attorneys); for defendant – Robert F. Renaud (Palumbo, Renaud & DeAppolonio, LLC, attorneys); for New Jersey Educational Facilities Authority – Marlene Brown (Gurbir Grewal, Attorney General of New Jersey, attorney).

The court concluded that the portion of Kean University's New Jersey Center for Science, Technology, and Mathematics building occupied, operated, and managed by Gourmet Dining, LLC, as Ursino restaurant was subject to local property tax for the 2013 and 2014 tax years. The court determined that Ursino restaurant was not a Kean University dining hall, and did not participate in, and was not part of, any meal plan offered by Kean University to its students, faculty, or administrators. Additionally, Ursino did not accept the students' flexible dining currencies, or offer discounted meals to University students, faculty, or administrators. Thus, Ursino was not devoted to serving the basic needs of the University's student body, faculty, or administrators, and failed to furnish a service directly related to the functions of government under N.J.S.A. 54:4-3.3. Moreover, Ursino's operation was a private, profit-making commercial enterprise, and the payment of fees by Gourmet Dining, LLC to Kean University Foundation did not make the premises occupied by Ursino restaurant a building used for colleges, schools, academies or seminaries, as contemplated under N.J.S.A. 54:4-3.6. Finally, the court concluded that the New Jersey Center for Science, Technology and Mathematics building is an educational facility under the New Jersey educational facilities authority law, N.J.S.A. 18A:72A-2 to -83. However, the operation and management of Ursino restaurant was not a project of the New Jersey Educational Facilities Authority. Significantly, Gourmet Dining, LLC was not an agent of the New Jersey Educational Facilities Authority, as such term is construed under N.J.S.A. 18A:72A:18. Therefore, application of N.J.S.A. 18A:72A-18 to Gourmet Dining, LLC's use, occupancy, operation, and management of Ursino restaurant does not afford it an exemption from local property tax.

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CORPORATION BUSINESS TAX – LIMITED PARTNERSHIPS – A LIMITED PARTNERSHIP THAT SUBMITS LIMITED A CORPORATE PARTNER'S CONSENT TO NEW JERSEY TAXATION IS RELIEVED OF ANY FURTHER RESPONSILITY UNDER THE CORPORATION BUSINESS TAX ACT REGARDING THAT PARTNER

Tax Court: National Auto Dealers Exchange, L.P. v. Director, Division of Taxation, Docket No. 000028-2014. Opinion by Andresini, P.J.T.C., decided February 26, 2018. For plaintiff - Marc A. Simonetti (Eversheds Sutherland (US) LLP, attorneys); for defendant - Michael J. Duffy (Gubrir S. Grewal, Attorney General of New Jersey).

Plaintiff moved for summary judgment on grounds that defendant lacked statutory authority to issue an assessment of Corporation Business Tax ("CBT"). Plaintiff is a New Jersey limited liability partnership consisting of two foreign corporate partners. For years 2004-2009 each partner provided the partnership with a signed consent to New Jersey taxation (Form NJ-1065E) and paid New Jersey Corporation Business Tax on its distributive shares of New Jersey partnership income by filing its own CBT return. In 2011, the limited partner requested a refund of CBT payments for 2004-2009 alleging lack of nexus with New Jersey under the CBT Act. Defendant denied the partner's refunds, and the partner filed a complaint with the Tax Court. The defendant audited plaintiff and assessed a deficiency on plaintiff under N.J.S.A. 54:10A-15.11, which requires partnerships to withhold and remit CBT on behalf of nonresident corporate limited partners. Plaintiff filed this complaint and moved for summary judgment arguing that under N.J.S.A. 54:10A-5.7, when a partnership obtained a partner's consent to New Jersey taxation, its obligation under 54:10A-15.11 has been satisfied. The court held that the assessments for tax years 2004-2005 were barred by the statute of limitations and declared the assessments for years 2006-2009 void as a matter of law. The court held the defendant lacked statutory authority to issue an assessment of CBT against plaintiff as CBT Act only required the partnership to either collect the partner's Form NJ-1065E or remit CBT on the partner's behalf to be fully relieved of any further CBT obligations.

(14 Pages)

CHARITABLE PURPOSE REQUIREMENT, NONHOSPITAL ORGANIZATIONS - REAL PROPERTY TAXES, EXEMPTIONS - EXEMPTIONS, REQUIREMENTS FOR EXEMPT STATUS – LOCAL GOVERNMENTS, FINANCE – REAL PROPERTY TAXES, ASSESSMENT & VALUATION - LEGISLATION, INTERPRETATION

Tax Court: Christian Mission John 316 v. Passaic City; Docket No. 013203-2013, opinion by Novin, J.T.C., decided February 28, 2018. For plaintiff – Tova L. Lutz (Lutz Law Group, LLC, attorneys); for defendants – Kenneth A. Porro (Chasan Lamparello Mallon & Capuzzo, P.C., attorneys).

The court concluded that a former commercial warehouse building, undergoing substantial renovations to convert it into a church sanctuary, offices, and meeting space, was not in actual use as of the assessing date under N.J.S.A. 54:4-3.6. Thus, the property was not entitled to an exemption from local property tax for the 2013 tax year. The taxpayer's goal, intent, or objective to furnish religious services for public benefit, at some future date, was insufficient to establish the requisite quid pro quo required under N.J.S.A. 54:4-3.6. The court interpreted the phrase "actually used" under N.J.S.A. 54:4-3.6, as implying that the use cannot be achieved at the expense of the safety, welfare, and well-being of the public, the intended beneficiaries of the non-profit entity's bounty.

(22 pages)

LOCAL PROPERTY TAX-TWELVE MONTH ADDED ASSESSMENT LEVIED FOR TAX YEAR 2016 BASED ON DATE ASSESSOR RECEIVED CERTIFICATE OF OCCUPANCY AND DISCOVERED HOME ADDITION IS VOID WHERE ADDITION WAS COMPLETED PRIOR TO OCTOBER 1 OF PRE-TAX YEAR-PARTIAL ASSESSMENT LEVIED FOR PRE-TAX YEAR 2015 IS UPHELD AS STATUTORILY AUTHORIZED.

Tax Court: Harsh P. Parikh and Jayan P. Desai v. Livingston Township; Docket Nos. 013603-2016; 013605-2016, opinion by Nugent, decided on January 25, 2018, released for publication February 26, 2018. For plaintiff - Michael I. Schneck (Schneck Law Group L.L.C.); for defendant - Sharon L. Weiner (Murphy McKeon, P.C.).

Taxpayers undertook a residential addition and alterations pursuant to a township building permit obtained February 5, 2015. A certificate of occupancy dated August 7, 2015 issued for the completed work was received by the assessor November 4, 2015. In October 2016, the assessor levied two added assessments on the property, representing value added for full-year 2016 and for the final four months of 2015. The county tax board affirmed the assessments and taxpayers appealed the judgment to the tax court. Both N.J.S.A. 54:4-63.2 and 63.3 permit the local authority to tax value added to the property by the taxpayer through work completed after the October 1 pre-tax year valuation date established in N.J.S.A. 54:4-23. The tax court reasoned that only the 2015 partial levy constituted a valid omitted added assessment based on the date the alterations were completed. The assessor's November 2015 discovery of alterations to the property completed before October 1, 2015, failed to satisfy the plain language of N.J.S.A. 54:4-63.2 necessary to sustain the full year 2016 added assessment. The court found the assessor had arrived at an erroneous determination of the property value on October 1, 2015 for tax year 2016, and that a remedy was available to the taxing authority through the normal tax appeal process. Finally, Township's argument that it is common practice among assessors in the State to impose an added assessment upon discovery of alterations through receipt of the certificate of occupancy, regardless of the date the work is completed, is unavailing.

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