LOCAL PROPERTY TAX – APPLICATION OF FREEZE ACT – MOTION OF DEFENDANT FOR RECONSIDERATION OF COURT'S GRANT OF FREEZE ACT RELIEF DENIED

Tax Court: 160 Chubb Props., LLC v. Twp. of Lyndhurst, Docket Nos. 002442-2014; 006305-2015; opinion by Orsen, J.T.C., decided May 31, 2019. 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).

Following the court's decision in 160 Chubb Props., LLC v. Twp. of Lyndhurst, 30 N.J. Tax 613 (Tax 2018), defendant, Township of Lyndhurst, moved for reconsideration, primarily based on the same arguments presented in its opposition to plaintiff's original motion for relief under the Freeze Act, namely, that increased tenant occupancy; the cost of work to be performed under construction permits; and the sales price of the property, demonstrate prima facie that a substantial and meaningful change in value occurred between the base year 2015 and freeze year 2017, warranting a plenary hearing. Defendant's only new arguments alleged that plaintiff, 160 Chubb Properties, LLC, had no legal standing to file the Freeze Act motion, and by granting Freeze Act relief for the 2017 tax year, the subsequent owner of the property received a "windfall." The court found that a motion for reconsideration is not meant to re-litigate issues already decided or otherwise award a proverbial 'second bite at the apple' to a dissatisfied litigant. The court also found that defendant ignored the reality that it is the new owner, and not plaintiff, asserting entitlement to Freeze Act relief. Because the 2015 base year judgment caption identifies plaintiff as 160 Chubb Properties, LLC, the new owner was required under R. 8:7(d) to adopt this caption for purposes of making the Freeze Act application. The court additionally found that the new owner not only has standing to seek relief under the Freeze Act, but is entitled to invoke its protections. The court determined that defendant's "windfall" argument does not represent the legislative intent of the Freeze Act, since the Freeze Act is a legislatively conferred right that attaches to ownership. Accordingly, the court denied defendant's motion for reconsideration.

(13 pages)

STATE TAX – INHERITANCE TAX – APPLICABILITY OF N.J.S.A. 54:34-1 AND N.J.S.A. 54:34-1.1

Tax Court: Valerie Shedlock and Judith Solan, Coexecutors of the Estate of Anthony Calleo v. Dir., Div. of Taxation, Docket No. 008644-2018; opinion by Bianco, J.T.C., decided April 30, 2019. For plaintiffs – Stephen L. Klein (Law Office of Stephen L. Klein, attorney); for defendant – Miles Eckardt (Gurbir S. Grewal, Attorney General of New Jersey, attorney).

Plaintiffs, Valerie Shedlock and Judith Solan ("Heirs"), moved to invalidate defendant's notice of assessment and seek a refund of taxes, and interest paid, and costs of suit. The Heirs argued that defendant erroneously included the real property located at 270 Farnham Avenue, Lodi, New Jersey ("Subject Property") as a taxable asset of the estate of the Anthony Calleo ("Decedent") for inheritance tax purposes. Defendant, Director of the Division of Taxation ("Director"), moved to dismiss the complaint with prejudice claiming that, the transfer of the Subject Property was intended to take effect upon the Decedent's death, and is therefore subject to the inheritance tax. The court determined that the motives of the Decedent were inconsequential where the transfer of a property was made more than three years prior to the decedent's death. The court further determined that because the Decedent transferred and conveyed his right, title and interest in the Subject Property more than three years before death, the transfer was not intended to take effect at or after the Decedent's death. Therefore, the Heirs' motion to invalidate the Director's notice of assessment and refund taxes and interest paid was granted. However, the Heirs' demand for costs of suit was denied.

(16 Pages)

LOCAL PROPERTY TAX

Tax Court: VNO 1105 State Hwy 36, L.L.C., by Stop & Shop v. Township of Hazlet, Docket Nos. 004038-2013; 008116-2014; 007353-2015; 002076-2016; 003935-2017; opinion by Sundar, J.T.C., decided April 2, 2019. For plaintiff - David B. Wolfe and Eileen Toll (Skoloff & Wolfe, P.C., attorneys); for defendant - James H. Gorman; for New Jersey Division of Taxation and Monmouth County Board of Taxation - Michelline Capistrano Foster (Gurbir S. Grewal, Attorney General of New Jersey, attorney).

Held: Defendant's motion in limine to bar testimony and report of plaintiff's proffered expert witness, an assessor in another taxing district, Township of Wall, is granted. The court's conclusion is based on an application of the underlying principles and provisions of the Local Government Ethics Law (which apply to assessors), which are echoed in the various published guidelines for assessors, including in N.J.A.C. 18:12A-1.9(l), and 18:17-4.1(a)(3), all of which emphasize the importance of an assessor avoiding any engagement in a private capacity that will reasonably be considered as improper or would impair the integrity of his/her office and position as assessor. An assessor, as a face of the government, and quasi-legislative agent of the State, is expected to possess and exercise high standards of ethics, professionalism, and public responsibility. As such, there is a public expectation that an assessor would not challenge or support challenges to local property tax assessments set by another assessor. Here, Wall Township assessor's appearance in support of plaintiff taxpayer's challenge to defendant assessor's assessments raises such concerns. The court can control the type and nature of testimony to be proffered, and also decide whether the individual being proffered as a witness can be accepted since it can proceed in any manner compatible with R. 1:1-2(a).

(22 Pages)

STATE TAXATION – GROSS INCOME TAX – STATUTE OF LIMITATIONS – LOTTERY WINNINGS

Tax Court: Mitchell Medoff v. Dir., Div. of Tax'n; Docket No. 009867-2018, opinion by Cimino, J.T.C., decided March 1, 2019. For plaintiff - David S. Neufel and Jeremy S. Cole (Flaster Greenberg, attorneys); for defendant – Ramanjit K. Chawla (Gurbir S. Grewal, Attorney General of New Jersey, attorney).

In 2009, the Legislature amended the law to tax lottery winnings. Previously, such winnings were free from income tax. Plaintiff paid taxes from 2009 through 2012 on installments from a 1993 prize. After the Tax Court's decisions in 2016 holding the 2009 law invalid as it applied to prizes won prior to its enactment, plaintiff sought a refund. The refund was sought outside the three year statute of limitations imposed on Gross Income Tax refunds.

Even if a tax provision is found to be invalid, a refund can only be allowed in accordance with statute. Plaintiff could have filed a timely request for refund as did the lottery winners in the 2016 decisions invalidating the retroactive application of the 2009 law. There is not any equitable basis such as square corners or manifest injustice to override the statute of limitations in this case.

(12 pages)

STATE CORPORATION BUSINESS TAX

Tax Court: Lorillard Tobacco Co. v. Dir., Div. of Taxation, Docket No. 008305-2007, opinion by Sundar, J.T.C., decided February 27, 2019. For plaintiff – Craig B. Fields and Mitchell A. Newmark (Morrison & Foerster, L.L.P., attorneys); for defendant – Marlene G. Brown and Joseph Palumbo (Gurbir S. Grewal, Attorney General of New Jersey, attorney).

Held: Defendant did not reasonably and fairly exercise its discretion in deeming only a portion of the royalty expenses paid by plaintiff to its subsidiary as excepted from the addback requirements simply because subsidiary paid a smaller amount of corporation business tax ("CBT") based on its New Jersey allocation factor which was lower than plaintiff's New Jersey allocation factor. Where the subsidiary included the entire amount of the royalties as its income, and paid CBT on its allocated portion, and defendant did not dispute the validity of either plaintiff's or the subsidiary's allocation factor, the difference in their respective allocation factors, does not, without more, mean that plaintiff established that only a partial addback of the royalty payments was unreasonable. Plaintiff's motion for summary judgment is granted.

(19 Pages)

N.J.S.A. 54:4-1 BUSINESS PERSONAL PROPERTY TAX - TELECOMMUNICATIONS CARRIER – LOCAL EXCHANGE – LEGISLATION, INTERPRETATION

Tax Court: Verizon New Jersey, Inc. v. Hopewell Borough, Docket Number 12215-2009; opinion by Brennan, J.T.C., decided January 28, 2019. For plaintiff – Susan A. Feeney and Farhan Ali (McCarter & English, LLP, attorneys); for defendant – Joseph C. Tauriello, attorney.

Following the court's decision in Verizon New Jersey, Inc. v. Hopewell Borough, 26 N.J. Tax 400 (Tax 2012), the parties proceeded to trial to resolve the definition of the statutory term "local telephone exchange" and for a determination as to whether plaintiff provided 51% of the dial tone and access for the Hopewell Telephone Exchange, as of January 1, 2008. The Tax Court defined "local telephone exchange" as being a geographic area as depicted on the exchange maps filed with Verizon's tariff. The court also found that having adopted this definition of a "local telephone exchange," Verizon continued to furnish in excess of 51% of the dial tone and access in the Hopewell Telephone Exchange as of January 1, 2008. The Tax Court affirmed the imposition of the business personal property tax pursuant to N.J.S.A. 54:4-1 for tax year 2009.

(29 Pages)

State Taxation – Sales and Use Tax – Tax Exemption – International Trade Law – Exports & Imports, Duties, Fees & Taxes

Tax Court: Abdul M. Momoh-Oare v. Dir., Div. of Taxation, Docket No. 013111-2016; opinion by Gilmore, J.T.C., decided January 28, 2019. For plaintiff – Abdul M. Momoh-Oare (Pro se); for defendant – Steven J. Colby (Gurbir S. Grewal, Attorney General of New Jersey, attorney).

A resident taxpayer challenged imposition of New Jersey sales tax on his in-state purchase of a motor vehicle, alleging that his export of the vehicle to Nigeria exempted the transaction from state sales tax. Taxpayer moved for summary judgment and the Director, Division of Taxation cross-moved for summary judgment. Held: Taxpayer's purchase did not qualify for exemption from sales tax on motor vehicle purchases under New Jersey statutes or regulations, and imposition of sales tax in this matter did not violate the Import-Export Clause of the United States Constitution, art. I, § 10, cl. 2. Therefore, the court denied taxpayer's motion for summary judgment, and granted the Director, Division of Taxation's cross-motion for summary judgment denying taxpayer's refund claim and dismissing the complaint.

(12 Pages)

Local Property Taxation - Assessment of Real Estate – Farmland Assessment

Tax Court: Barbara J. Hertz v. Borough of Lincoln Park, Docket No. 009897-2017; opinion by Bianco, J.T.C., decided January 8, 2019. For plaintiff – Barbara J. Hertz (pro se); for defendant – Jacquelin P. Gioioso (The Buzak Law Group, LLC, attorneys).

Plaintiff, Barbara J. Hertz, appealed to the denial of her 2017 Farmland Assessment application on her property. Defendant, Borough of Lincoln Park, sought affirmation of the denial by the Morris County Board of Taxation. For the reasons that follow, the court determined that plaintiff failed to establish that "not less than five acres of the property are . . . actively devoted to agricultural or horticultural use" as required for Farmland Assessment under N.J.S.A. 54:4-23.2. First, the court found that most of her alleged "crops" appear to be naturally occurring growth in a forest setting and determined that the haphazard and uncared for use of land does not necessarily qualify the land for farmland assessment. Second, the court determined that plaintiff failed to prove that the unused area of the Subject Property is "beneficial to the property" under N.J.A.C. 18:15-6.2. Third, the court determined that plaintiff's land measurements were unreliable and unverifiable; and, her testimony was not credible, contradictory, and self-serving. Lastly, the court determined that the municipal tax assessor fulfilled his statutory obligation to address plaintiff's application for Farmland Assessment. Therefore, the court affirmed the judgment of the Morris County Board of Taxation denying plaintiff's 2017 Farmland Assessment application for the plaintiff's property.

(22 Pages)

State Taxation - Gross Income Tax – Application and Exceptions to the Statute of Limitations

Tax Court: Arthur G. Nevins, JR. and Amanda Nevins v. Dir., Div. of Taxation, Docket No. 013075-2015; opinion by Bianco, J.T.C., decided January 8, 2019. For plaintiffs – Arthur G. Nevins, Jr. (pro se); for defendant – Abiola G. Miles (Gurbir S. Grewal, Attorney General of New Jersey, attorneys).

Plaintiffs, Arthur G. Nevins, JR. and Amanda Nevins, moved to annul defendant's final determination with regard to their 2008 New Jersey gross income tax. They argued that the defendant failed to timely assess the tax within the three-year limitations period under N.J.S.A. 54A:9-4(a). Defendant, the Director of the Division of Taxation ("Director"), moved to dismiss the complaint with prejudice claiming that exceptions to the statute of limitations under N.J.S.A. 54A:9-4(c) apply. The court determined that the general three-year statute of limitations period is not implicated as the amount of tax voluntarily reported as due by plaintiffs on their self-processed return is assessed on the date of filing of the return. The court also determined that a notice of deficiency is not required to be issued for self-assessed taxes. Lastly, the court ruled that the Director had the authority to assess the plaintiffs' 2008 gross income tax at any time under N.J.S.A. 54A:9-4(c)(1)(C), because plaintiffs did not appropriately report the changes made by the Internal Revenue Service to the Division of Taxation according to N.J.S.A. 54A:8-7. Therefore, the court granted the Director's motion for summary judgment to dismiss the complaint with prejudice and affirmed the Director's final determination.

(19 Pages)