DATE **NAME OF CASE (DOCKET NUMBER)**

8-1-22 Jaguar Land Rover N.A. v. Director, Division of Taxation & Mahwah Twp. (14046-2018)

Tax Court: Jaguar Land Rover North America v. Director Division of Taxation and Township of Mahwah; Docket No. 014046-2018; opinion by Bianco, J.T.C., decided July 29, 2022. For plaintiff – Joseph E. Bock, Esq. (Spiotti & Associates, P.C., attorney); for defendant Director, Division of Taxation – Anthony D. Tancini, Esq. (Matthew J. Platkin, Acting Attorney General of New Jersey, attorney); for defendant Township of Mahwah – Nylema Nabbie (Cleary Giacobbe Alfieri Jacobs, LLC, attorney).

In interpreting an exemption under the Statewide Non-residential Development Fee Act, N.J.S.A. 40:55D-8.1 to -8.7, the court found that an urban transit hub must be located within one-half mile radius surrounding the mid point of a New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation rail station platform area and be specifically delineated by the New Jersey Economic Development Authority (NJEDA). The court found that while the Subject Property was within one-half mile of a qualifying rail station, it was not specifically delineated by the NJEDA and thus was ineligible for the exemption under N.J.S.A. 40:55D-8.4(b)(4). Because the court found the Statute to be unambiguous and plain on its face, it declined to consult extrinsic sources in its interpretation of the statute.

4-29-22 Giant Realty LLC v. Lavallette Bor. (001063-2014)

Tax Court: Giant Realty, LLC v. Lavalette Borough; Docket No. 001063-20142014, opinion by Fiamingo, J.T.C., decided April 28, 2022. For plaintiff – Michael I. Schneck (Schneck Law Group, LLC., attorneys); for defendant - Dominic P. DiYanni (Eric M. Bernstein & Associates, LLC, attorneys).

HELD: Plaintiff moved to apply the provisions of the Freeze Act, N.J.S.A. 54:51A-8, for the judgment entered in tax year 2014 to tax years 2015 and 2016. Defendant opposed arguing that the issuance of a permit to develop the subject property under the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 to -51 ("CAFRA"), constituted a change in value so that the Freeze Act should not apply. The court ruled that the issuance of a CAFRA permit in and of itself was insufficient to establish a *prima facie* case that an external change in the value of the subject property materialized which "substantially and meaningfully" increased the value of the property. Such change can only be demonstrated by showing the value of the property before and after the change. Having failed to make the required prima facie showing, defendant was not entitled to a plenary hearing on the applicability of the Freeze Act. Plaintiff’s motion to apply the Freeze Act was granted.

3-25-22 Life With Joy, Inc. v. Township of Green/Township of Green v. Life With Joy, Inc. (9572-2016, 8566-2017, 9068-2018, 13541-2019, 10728-2020)

Tax Court: Twp. of Green v. Life With Joy, Inc.; Docket Nos. 009572-2016 and 009068-2018; Life With Joy, Inc. v. Twp. of Green; Docket Nos. 008566-2017, 013541-2019, 010728-2020; opinion by Bianco, J.T.C., decided March 24, 2022. For Life With Joy, Inc. – Jay J. Freireich (Freireich, LLC., attorney); For Twp. of Green – Robert B. McBriar (Schneck, Price, Smith, & King, LLP., attorneys).

In granting nonprofit status under N.J.S.A. 54:4-6.3, the court found that the Subject Property was actually used in furtherance of the nonprofit's charitable purpose, to provide a living and learning center for young adults with developmental disabilities, and that any profit-making activity happening on the Subject Property pursuant to state designed and instituted programs was de minimis. The court dismissed the untimely 2019 appeal for lack of jurisdiction. In denying the township's claim that the exemption must be denied in light of alleged zoning violations, the court revisited the current juxtaposition between municipal land use law and N.J.S.A. 54:4-6.3 presented by Soc'y of the Holy Child Jesus v. City of Summit, 418 N.J. Super. 365, 368 (App. Div. 2011).

3-2-22 Sylvester & Yongjie Tuohy v. Director, Division of Taxation (13607-2018)

Tax Court: Sylvester and Yongjie Touhy v. Director, Division of Taxation, Docket No. 013607-2018; opinion by Bedrin Murray, J.T.C., decided March 1, 2022. For plaintiffs – Sylvester Tuohy and Yongjie Tuohy (Self-Represented); for defendant – Miles Eckardt, Deputy Attorney General (Matthew Platkin, Acting Attorney General of New Jersey, attorney).

Held: Defendant's motion for summary judgment seeking dismissal of a complaint challenging the assessment of New Jersey gross income tax ("NJ GIT") for tax year 2014 is granted. Plaintiffs contend that defendant improperly added back into their gross income the following: (1) dividends, (2) capital gains, and (3) wages withheld to fund a § 403(b) retirement plan. In addition, plaintiffs argue that defendant erroneously calculated their resident tax credit under N.J.S.A. 54A:4-1 for income subject to tax in other states or political subdivisions. As to the resident tax credit calculation, the court holds plaintiffs are collaterally estopped from relitigating this issue because they unsuccessfully litigated the same issue in the Tax Court for a prior tax year. Even if the principle of collateral estoppel was not applied, plaintiffs' allegations are without merit based on statutory, regulatory, and case law. With regard to plaintiffs' challenge to the addition of dividends, capital gains, and certain wages to their 2014 gross income, the court finds their arguments to be unsupported by statutory or regulatory law, or precedent. Thus, plaintiffs have failed to overcome the presumption of validity accorded to defendant's interpretation of the relevant NJ GIT statutes. Therefore, summary judgment in favor of defendant is appropriate.

2-28-22 Branchburg Hospitality LLC v. Twp. pf Branchburg (011494-2021)

Tax Court: Branchburg Hospitality LLC v. Township of Branchburg, Docket No. 011494-21, opinion by Fiamingo, J.T.C., decided February 24, 2022. For plaintiff – Farhan Ali McCarter & English, LLP, attorneys); for defendant - Wesley E. Buirkle (DiFrancesco Bateman Kunzman, Davis, Lehrer & Flaum, P.C., attorneys).

HELD: Plaintiff timely appealed the decision of the County Board of Taxation which dismissed plaintiff's petition pursuant to N.J.S.A. 54:4-34 (Chapter 91) for tax year 2021. Defendant moved before this court to dismiss plaintiff's complaint for (a) lack of subject matter jurisdiction; (b) failure to pay taxes pursuant to N.J.S.A. 54:51A-1 and (c) failure to respond to a request for income and expense statement pursuant to Chapter 91. The court denied defendant's motion to dismiss for lack of subject matter jurisdiction. The court found that plaintiff's prior filing and withdrawal of a direct appeal as to which a judgment of dismissal was entered, did not bar plaintiff from filing an appeal at the County Board of Taxation for the same tax year, or from appealing the resultant decision of the County Board of Taxation to the Tax Court. The court however dismissed the complaint for failure to pay real property taxes as required by N.J.S.A. 54:51A-1(b) since plaintiff failed to produce sufficient proofs of the impact of COVID-19 on its ability to pay the taxes due. As a result, the court did not reach the merits defendant's motion to dismiss for failure to comply with Chapter 91.

2-25-22 3 University Plaza SPE LLC, et al. v. Hackensack City (5002-2014, 1670-2015, 3553-2016, 1163-2017, 3768-2018, 12891-2019)

Tax Court: 3 University Plaza SPE, LLC/3 Univ. Plza SPE % Normandy RE P v. Hackensack City; Docket Nos. 005002-2014, 001670-2015, 003553-2016, 001163-2017, 003768-2018, and 012891-2019, opinion by Novin, J.T.C., decided February 24, 2022. For plaintiff – Michael J. Caccavelli and Grace Chun (Pearlman & Miranda, LLC, attorneys); for defendant – Kenneth A. Porro (Chasan Lamparello Mallon & Cappuzzo, P.C., attorneys).

The court found that no globally accepted practice has been adopted for the handling of tenant improvement allowances and leasing commission expenses under reconstructed operating statements. For local property tax valuation purposes, the decision to include or exclude tenant improvement allowances and leasing commissions, as stabilized operating expenses, is a function of context, the market, and the intended use of the appraisal report. The characterization of tenant improvement allowances and leasing commissions must be based on the appraiser's examination of a property's historical operations, and evaluation and analysis of market conditions. When tenant improvement allowances and leasing commission expenses are necessary to achieve economic or market rent, stabilize occupancy, and maintain a property's value, they may be treated as operating expenses and deducted from effective gross income in calculating net operating income. However, an appraiser may reject certain expenses, including tenant improvement allowances and leasing commissions, when they are erratic, uncharacteristic, and not typical in the market or industry. Here, the court concluded that plaintiff's expert's approach, deducting tenant improvement allowances and leasing commissions as "above-the-line" stabilized operating expenses, was reasonable and supported by the trial record. The court further concluded that the Band of Investment technique provided the most accurate and reliable method of deriving a capitalization rate because it is not polluted or impacted by questions of how potential survey recipients perceived hypothetical transactional questions or how a market perceives an annually reoccurring operating expense. Finally, in reducing the property's 2014 and 2015 tax assessments, the court found that the subject property's 2019 sale was not credible evidence of true or fair market value. The court scheduled the 2016, 2017, 2018, and 2019 tax year matters for further proceedings.

2-2-22 Erez Holdings Urban Renewal, LLC v. Director, Div. of Taxation and Twp. of Lakewood (013941-2018)

Tax Court: Erez Holdings Urban Renewal, LLC, v. Director, Division of Taxation and Township of Lakewood, Docket No. 013941-2018, opinion by Sundar, P.J.T.C., decided February 1, 2022. For plaintiff - Catherine J. Bick (Giordiano Halleran Ciesla PC, attorneys); for defendants - Joseph Palumbo, Anthony D. Tancini (Andrew J. Bruck, Acting Attorney General of New Jersey, attorney); Harold H. Hensel (Secare & Hensel, attorneys).

Held: Plaintiff's contention that the Non-Residential Development Fee (NRDF) imposed under N.J.S.A. 40:55D-8.4 should be computed by attributing $0 to equalized assessed value of the improvements because they are exempt from local property tax under the Long - Term Tax Exemption law, N.J.S.A. 40A:20-1 to -22, is rejected based on the plain language of the NRDF statute. The amount to be excluded for the parking lot when computing the NRDF is its value as determined under the accepted methods employed for valuing all real property in the local property tax arena (cost, income, comparable sales). The court's standard of review of the assessor's value determination of the parking lot for purposes of its exclusion when computing the NRDF, is the same as in local property tax matters. Thus, a presumptive correctness attaches to the assessor's determination with the burden of proof upon the property owner to overcome the same and persuade the court that the exclusion amount should be different. Here, based on the evidence provided, plaintiff failed to persuade the court that the value of the parking lot to be excluded for purposes of calculating the NRDF should be $3,407,000. The court therefore affirms the final determination of defendant, Director, Division of Taxation, that the assessor of defendant, Township of Lakewood, correctly determined the NRDF.

12-27-21 New West Developers, LLC v Twp. of Irvington/Crown Real Estate Holdings, Inc. v Twp. of Irvington (14704-2013, 010653-2014, 009474-2015, 014706-2013, 010648-2014, 009475-2015, 009727-2016, 009728-2016)

Tax Court: New West Developers, LLC v. Township of Irvington, Docket No. 014704-2013; 010653-2014; 009474-2015; 014706-2013; 010648-2014; 009475-2015; Crown Real Estate Holdings, Inc. v. Township of Irvington, Docket Nos. 009727-2016; 009728-2016, opinion by Bedrin Murray, J.T.C., decided December 23, 2021. For plaintiff – Daniel G. Keough (Ventura, Miesowitz, Keough & Warner, PC, attorney); for defendant – Jarrid H. Kantor (Antonelli Kantor, PC, attorney).

Held: Defendant's motions to dismiss plaintiffs' complaints under N.J.S.A. 54:51A-1(b), which requires a taxpayer to satisfy certain local property tax obligations prior to filing an action in the Tax Court, are granted. While the requirement was previously jurisdictional, allowing the court no discretion in determining if a matter should proceed, the statute was amended in 1999 to provide for relaxation of the tax payment provision in the interests of justice. Plaintiff New West, owner of the 15 properties during tax years 2013 through 2015, offers no reason for relaxation. Plaintiff Crown, owner of the properties for tax year 2016, contends its difficulty in ascertaining arrearages owed for all tax years warrants relaxation of the tax payment requirement. The court rejects plaintiff's argument, holding that the interests of justice would be subverted by allowing the complaints to go forward under the circumstances. In addition, plaintiffs argue that defendant's failure to object to the non-payment of property taxes when these matters were before the county tax board bars it from raising the same objection in Tax Court. The court holds that while the county tax boards and Tax Court are governed by tax payment provisions under N.J.S.A. 54:3-27 and N.J.S.A. 54:51A-1(b) respectively, they are separate and distinct, and contain different payment schemes. Thus, the court concludes defendant is not barred from raising the objection in Tax Court.

12-21-21 Punish and Indu Malhotra v. Director, Division of Taxation (10788-2018)

Tax Court: Punish and Indu Malhotra v. Director, Division of Taxation, Docket No. 010788-2018; opinion by Orsen, J.T.C., decided December 16, 2021. For plaintiffs - Punish and Indu Malhotra (Self-represented); for defendant - Miles Eckardt, Deputy Attorney General (Andrew J. Bruck, Acting Attorney General of New Jersey, attorney).

Plaintiffs sought relief from penalties and interest after being assessed for an erroneous income tax refund due to an error on their tax return for New Jersey income tax withholding. Defendant filed a motion for summary judgment seeking recovery of the erroneous refund with applicable penalties and interest. Plaintiffs filed a cross motion for summary judgment requesting that penalties and interest be abated due to the lengthy passage of time for assessment.

The court first determined whether defendant had statutory authority to recover the erroneous refund pursuant to the applicable statute of limitations. Defendant argued that the statute of limitations to obtain the erroneous refund was either three years from the date the tax return was due or an extended five-year statute of limitations due to a misrepresentation of material fact on the tax return. Plaintiff argued that the mistake on the tax return does not qualify as a misrepresentation.

The court found that the three-year statute of limitations expired three years from the making of the refund and the five-year statute of limitations did not apply because plaintiffs' mistake did not rise to the level of a misrepresentation. Accordingly, the court denied defendant's motion for summary judgment to recover the erroneous refund. Plaintiffs' motion for summary judgment was granted to abate the penalties and interest as there was no tax due and any payments made, or tax refunds withheld, were to be returned with applicable interest.

12-16-21 Cargill Meat Solutions v. Director, Division of Taxation (08146-2018)

Tax Court: Cargill Meat Solution, Corp. v. Dir., Div. of Tax'n; Docket No. 008146-2018, opinion by Cimino, J.T.C., decided December 15, 2021. For plaintiff - Kyle O. Sollie (Reed Smith LLP, attorneys; Kylie O. Sollie and Matthew L. Setzer on the brief); for defendant – Joseph A. Palumbo, Deputy Attorney General (Andrew J. Bruck, Acting Attorney General of New Jersey, attorney).

Held: The Clean Communities and Recycling Grant Act imposes a user fee, commonly referred to as the litter tax. The fee is based upon the sales of litter-generating products by manufacturers, wholesalers and retailers. Wholesaler-to-wholesaler sales are exempt. While plaintiff admits it manufactures the products at issue, it also asserts the wholesaler-to-wholesaler exemption applies for sales it makes to wholesalers.

The court noted that under plaintiff's argument, all manufacturers that sell to wholesalers would claim the exemption thus rendering the statutory reference to manufacturer sales superfluous. In addition, the court held that the plain language of the Act provides that the fee is based upon sales within the state, not whether the manufacturing occurred in-state. Moreover, the Legislature did not intend to put local manufacturers at a disadvantage. Finally, the longstanding regulations adopted by the Director provide that the location of where the manufacturing takes place is not determinative.