



BIENNIAL REPORT OF THE
SUPREME COURT COMMITTEE ON THE TAX COURT
1998-99 and 1999-2000 COURT YEARS
SUBMITTED TO THE SUPREME COURT OF NEW JERSEY

January 18, 2000

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INTRODUCTION

The Supreme Court Committee on the Tax Court (the "Committee") is comprised of members of the bench and tax bar as well as representatives of taxpayers' groups, local, county and state tax administrators and others concerned with the administration and review of the New Jersey tax laws. The Committee meetings held during the period beginning September 1, 1998 and ending January 5, 2000 were well attended. Numerous topics and issues were covered and discussions were vigorous.

The work of the Committee was not dominated by any one issue. The Committee continued to engage in a comprehensive examination of the rules governing practice in the Tax Court and a variety of other issues. Specifically, the Committee discussed issues relating to the review of state and local tax assessments, proposed rule amendments, recommended legislation, case management and court procedures, court forms, small claims procedures and published and unpublished Tax Court opinions.

In September 1998, the Chairman appointed four standing subcommittees: the Miscellaneous Rules Subcommittee, the Differentiated Case Management Subcommittee, the Small Claims Procedures Subcommittee and the Legislation Subcommittee. The bulk of the rule amendments considered, recommended for adoption or rejected by the Committee were the product of the work of these standing subcommittees. Other shorter term subcommittees were appointed on an as-needed basis.

Recommendations of the Differentiated Case Management Subcommittee resulted in an application by the Committee to the Supreme Court for emergent consideration and adoption of rule amendments pursuant to Guideline 7 of the Operational Guidelines for Supreme Court Committees. In response to the

application, the Supreme Court adopted amendments to both the Local Property Tax Differentiated Case Management Pilot Program and the Program Rules to be effective January 1, 2000. Pursuant to Guideline 7, these rule amendments are included in Part II of this report to allow for public review and comment.

Comprehensive legislative recommendations that have been a part of the Committee's reports for at least the past fourteen years were adopted by the Legislature (S.673) and signed into law by the Governor (L.1999, c.208) on September 17, 1999. Reference to this legislation is included in Part V of this report.

PART I — RULE AMENDMENTS RECOMMENDED FOR ADOPTION

The Committee recommends to the Supreme Court the following rule amendments. All deletions and new language are indicated in bold text.

Proposed Amendment to R. 8:3-4(b) and (c)—Modification of Small Claims Jurisdiction.

For several years, the Committee has engaged in discussion concerning the appropriate threshold or jurisdiction for small claims cases. It was also brought to the Committee’s attention that, in recent years, an increasing problem has been the improper designation of filed cases as small claims in order to avoid the higher filing fee and the more formal discovery requirements associated with the filing of regular cases. Because the current jurisdictional limit for small claims is based solely upon a dollar amount, this problem does not arise in state tax controversies filed as small claims cases because the amount at issue is readily ascertainable. Rather, given the interaction of factors such as value, ratios and tax rates, the dollar amount at stake in local property tax appeals filed as small claims cases is often not readily ascertainable by the Tax Court Management Office, thereby making classification difficult at the time of intake.

After much review and consideration of this issue, the Committee, through the work of its Small Claims Procedure Subcommittee, recommends that the jurisdictional determination for local property tax small claims cases be changed from a dollar amount to a jurisdiction based upon property classification. The Committee does not recommend that the existing \$2,000 jurisdictional threshold for state tax cases be changed or modified at this time.

The Committee proposes amending R. 8:3-4(b) and (c), R. 8:11 and R. 8:12(b) and (c)(2) in order to change the small claims jurisdiction for local property tax cases to include only those cases that involve 1-4 family residential properties (referred to as “class 2 property” in the Rules and this Report

based upon classifications set forth in N.J.A.C. 18:12-2.2) or farm buildings and related land used for residential purposes (referred to as “class 3A farm residence” in the Rules and this Report based upon the farmland classification set forth in N.J.A.C. 18:12-2.2). The Committee feels that, as a general rule, local residential property tax appeals in these categories are less complex than small commercial property tax appeals and that it is more common for tax appeals of residential properties to be handled on a *pro se* basis. Tax appeals of these property classes would be facilitated by the small claims procedures.

Three members of the Committee spoke in opposition to this change because they felt that the movement of all commercial property tax cases outside of the small claims forum might prevent the appeal of some cases because of the additional burdens on the taxpayer. Nevertheless, the Committee feels that the additional filing fee of \$140 for these types of cases (\$175 regular case fee as opposed to \$35 small claims fee) would not act as a deterrent to the filing of cases with any merit.

In sum, the recommended change will bring a more orderly issue-based classification to small claims jurisdiction and will eliminate the filing fee abuses that have taken place upon the initial filing of a complaint. The text of the proposed amendments follow and are linked to amendments to R. 8:11 and R. 8:12(b) and (c)(2) proposed in Parts I D and I E of this Report.

Rule 8:3-4. Contents of Complaint, Generally

(a) . . . no change.

(b) **Claim for Relief.** A pleading which sets forth a claim for relief shall briefly state the factual basis of the claim and the relief sought. Relief in the alternative may be demanded. **[Except as set forth in R. 8:3-4(c), a] A** request may be made for a change in real property tax assessment without specifying the amount of such change. A claim for exemption shall be specifically pleaded.

Small Claims Classification [Amount in Controversy].

(1) **In state tax cases, [T]the complaint [and the counterclaim, if any,]** shall state whether the amount of refund claimed or the taxes or additional taxes sought to be set aside or the amount in controversy **[or amount of taxes sought to be increased]**, as the case may be, with respect to any year, exceeds the sum of \$2,000 exclusive of interest and penalties. **[For the purpose of this paragraph said amount refers to the amount of tax, not the tax assessment.]**

(2) **In local property tax cases, the complaint shall state whether each separately assessed parcel of property under appeal is a class 2 property (1-4 family residence) or a class 3A farm residence.**

. . . no change.

. . . no change.

Note: Adopted June 20, 1979 to be effective July 1, 1979; Paragraphs (a) and (d) amended July 15, 1982 to be effective September 13, 1982; paragraph (e) adopted November 5, 1986 to be effective January 1, 1987; **paragraphs (b) and (c) amended _____, 2000 to be effective September 1, 2000.**

B. Proposed Amendment to R. 8:7(c)—Addition of Caption.

It was brought to the Committee's attention by the Administrative Office of the Courts that R. 8:7(c) does not include a title or caption. The Committee proposes to amend R. 8:7(c) by adding the word "Time" to identify the subparagraph. The text of the proposed amendment follows.

Rule 8:7. MOTIONS

- (a) . . . no change.
- (b) . . . no change.
- (c) **Time.** Motions shall be filed within the time prescribed by R. 1:6-3.
- (d) . . . no change.
- (e) . . . no change.

Note: Adopted June 20, 1979 to be effective July 1, 1979. Amended July 8, 1980 to be effective July 15, 1980; paragraph (b) amended and new paragraph (c) adopted July 16, 1981 to be effective September 14, 1981; caption of paragraph (a) added, caption of paragraph (b) added and the text amended July 15, 1982 to be effective September 13, 1982; new paragraph (d) adopted July 28, 1984 to be effective September 10, 1984; new paragraph (e) adopted July 10, 1998 to be effective September 1, 1998; **paragraph (c) amended _____, 2000 to be effective September 1, 2000.**

C. Proposed Amendment to R. 8:10—Clarification of Filing Deadline for Reconsideration Motion.

It was brought to the Committee’s attention that the Attorney General’s office has had some difficulty determining whether a motion for reconsideration following entry of judgment or order was timely filed. R. 8:10 indicates that a motion to amend or alter a judgment or order must be made 20 days after “entry” of the judgment or order. R. 4:49-2, on the other hand, counts the time from the service of the judgment or order. Pursuant to R. 4-1 of the Rules Governing Practice in the Tax Court, the Part VIII rules control where they differ from the civil practice rules in Part IV. Therefore, the Committee proposes to clarify that the 20 days be counted from the date of the judgment or order. The text of the proposed amendment follows.

Rule 8:10. NEW TRIALS; AMENDMENT OF FINDINGS OR JUDGMENTS

The provisions of R. 1:7-4, R. 4:49-1 and R. 4:49-2 (Motion for New Trial and Motion to Alter or Amend a Judgment) shall apply to Tax Court matters except that all such motions shall be filed and served not later than 20 days after the conclusions of the court are announced orally or in writing, with respect to R. 1:7-4 and R. 4:49-1, and after [entry] the date of the judgment or order, with respect to R. 4:49-2.

Note: Adopted June 20, 1979 to be effective July 1, 1979. Amended July 8, 1980 to be effective July 15, 1980; caption amended July 22, 1983 to be effective September 12, 1983; amended July 26, 1984 to be effective September 10, 1984; caption and text amended November 7, 1988 to be effective January 2, 1989; **amended _____, 2000 to be effective September 1, 2000.**

D. Proposed Amendment to R. 8:11—Modification of Small Claims Jurisdiction for Local Property Tax Cases.

This proposed amendment is linked to amendments of R. 8:3-4(b) and (c) and R. 8:12(b) and (c)(2) proposed in Parts I A and I E of this Report. The explanation set forth in Part I A is repeated here for convenient reference.

For several years, the Committee has engaged in discussion concerning the appropriate threshold or jurisdiction for small claims cases. It was also brought to the Committee's attention that, in recent years, an increasing problem has been the improper designation of filed cases as small claims in order to avoid the higher filing fee and the more formal discovery requirements associated with the filing of regular cases. Because the current jurisdictional limit for small claims is based solely upon a dollar amount, this problem does not arise in state tax controversies filed as small claims cases because the amount at issue is readily ascertainable. Rather, given the interaction of factors such as value, ratios and tax rates, the dollar amount at stake in local property tax appeals filed as small claims cases is often not readily ascertainable by the Tax Court Management Office, thereby making classification difficult at the time of intake.

After much review and consideration of this issue, the Committee, through the work of its Small Claims Procedure Subcommittee, recommends that the jurisdictional determination for local property tax small claims cases be changed from a dollar amount to a jurisdiction based upon property classification. The Committee does not recommend that the existing \$2,000 jurisdictional threshold for state tax cases be changed or modified at this time.

The Committee proposes amending R. 8:3-4(b) and (c), R. 8:11 and R. 8:12(b) and (c)(2) in order to change the small claims jurisdiction for local property tax cases to include only those cases that

are class 2 property (1-4 family residences) or class 3A farm residence. The Committee feels that, as a general rule, local residential property tax appeals in these categories are less complex than small commercial property tax appeals and that it is more common for tax appeals of residential properties to be handled on a *pro se* basis. Tax appeals of these property classes would be facilitated by the small claims procedures.

Three members of the Committee spoke in opposition to this change because they felt that the movement of all commercial property tax cases outside of the small claims forum might prevent the appeal of some cases because of the additional burdens on the taxpayer. Nevertheless, the Committee feels that the additional filing fee of \$140 for these types of cases (\$175 regular case fee as opposed to \$35 small claims fee) would not act as a deterrent to the filing of cases with any merit.

In sum, the recommended change will bring a more orderly issue-based classification to small claims jurisdiction and will eliminate the filing fee abuses that have taken place upon the initial filing of a complaint. The text of the proposed amendment follows.

Rule 8:11. SMALL CLAIMS DIVISION; PRACTICE AND PROCEDURE

The small claims division will hear all **state tax** cases in which amount of refund claimed or the taxes or additional taxes sought to be set aside with respect to any year for which the amount in controversy as alleged in the complaint does not exceed the sum of \$2,000 exclusive of interest and penalties. **[For the purpose of this paragraph the amount refers to the amount of tax, not the tax assessment.]** **The small claims division will hear all local property tax cases in which the property at issue is a class 2 property (1-4 family residence) or a class 3A farm residence.**

The Tax Court Administrator shall assign complaints as appropriate to the small claims division.

The general rules of practice and procedure in the Tax Court shall apply to the small claims division; however, discovery is limited as provided in R. 8:6-1(a)(4) and the pretrial conference may be held at the time that the case is scheduled for hearing. The pretrial conference and the hearing shall be informal and the Court may hear such testimony and receive such evidence as it deems necessary or desirable for a just and equitable determination of the case. All testimony shall be given under oath and a verbatim record shall be made of the proceeding.

A complaint for review of a local property tax assessment on property which is in common ownership with and contiguous to other property will be regarded as a small claims complaint for all purposes, including assignment and filing fee calculation, only if **[the amount in controversy for]** each of the separately assessed parcels included in the complaint is within the jurisdiction**[al limit]** of the small claims division. If **[the amount in controversy for]** one or more of the separately assessed parcels **[exceeds] is outside** the jurisdiction**[al limit]** of the small claims division, the complaint shall not be regarded as a small claims complaint.

Instate tax cases, [I]f it appears[,] at any time before the close of proofs[,]**]** that the amount of refund claimed or the taxes or additional taxes sought to be set aside or amount in controversy exceeds the jurisdictional amount of the small claims division, the relief to be granted need not be limited to such jurisdictional amount, and the court may in its discretion retain the matter in the small claims division or transfer the matter to the general calendar.

In local property tax cases, if it appears at any time before the close of proofs that a parcel of property under appeal is neither a class 2 property (1-4 family residence) nor a class 3A farm residence, and therefore not within the jurisdiction of the small claims division, the court may in its discretion retain the matter in the small claims division or transfer the matter to the general calendar.

Note: Adopted June 20, 1979 to be effective July 1, 1979; amended July 22, 1983 to be effective September 12, 1983; amended November 5, 1986 to be effective January 1, 1987; amended November 7, 1988 to be effective January 2, 1989; amended July 13, 1994 to be effective September 1, 1994; **amended _____, 2000 to be effective September 1, 2000.**

Proposed Amendment to R. 8:12(b) and (c)(2)—Changes to Conform with Modification of Small Claims Jurisdiction.

These proposed amendments are linked to amendments of R. 8:3-4(b) and (c) and R. 8:11 proposed in Parts I A and I D of this Report. The explanation set forth in Part I A is repeated here for convenient reference.

For several years, the Committee has engaged in discussion concerning the appropriate threshold or jurisdiction for small claims cases. It was also brought to the Committee's attention that, in recent years, an increasing problem has been the improper designation of filed cases as small claims in order to avoid the higher filing fee and the more formal discovery requirements associated with the filing of regular cases. Because the current jurisdictional limit for small claims is based solely upon a dollar amount, this problem does not arise in state tax controversies filed as small claims cases because the amount at issue is readily ascertainable. Rather, given the interaction of factors such as value, ratios and tax rates, the dollar amount at stake in local property tax appeals filed as small claims cases is often not readily ascertainable by the Tax Court Management Office, thereby making classification difficult at the time of intake.

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The Committee proposes amending R. 8:3-4(b) and (c), R. 8:11 and R. 8:12(b) and (c)(2) in order to change the small claims jurisdiction for local property tax cases to include only those cases that are class 2 property (1-4 family residences) or class 3A farm residence. The Committee feels that, as a

general rule, local residential property tax appeals in these categories are less complex than small commercial property tax appeals and that it is more common for tax appeals of residential properties to be handled on a *pro se* basis. Tax appeals of these property classes would be facilitated by the small claims procedures.

Three members of the Committee spoke in opposition to this change because they felt that the movement of all commercial property tax cases outside of the small claims forum might prevent the appeal of some cases because of the additional burdens on the taxpayer. Nevertheless, the Committee feels that the additional filing fee of \$140 for these types of cases (\$175 regular case fee as opposed to \$35 small claims fee) would not act as a deterrent to the filing of cases with any merit.

In sum, the recommended change will bring a more orderly issue-based classification to small claims jurisdiction and will eliminate the filing fee abuses that have taken place upon the initial filing of a complaint. The text of the proposed amendments follow.

Rule 8:12. FILING FEES

(a) . . . no change.

(b) Small Claims. A fee of \$35 shall be paid to the Tax Court upon the filing of a complaint or counterclaim where the **[amount in controversy]** case is alleged to be within the small claims jurisdiction pursuant to Rule 8:11. The small claims fee shall promptly be supplemented, whenever notice is given by the Court that the matter is not within the small claims jurisdiction, so that the total fee paid is as set forth in paragraph (a) of this rule.

(c) Multiple Causes of Action in a Single Complaint or Counterclaim.

(1) . . . no change.

(2) Condominiums.

(i) Condominiums in Common Ownership. As permitted by Rule 8:3-5(a)(4), when properties are in the same ownership and part of the same master deed, if a complaint or counterclaim in an action to review a real property tax assessment includes more than one parcel of real property separately assessed pursuant to the provisions of N.J.S.A. 46:8A-26 (Horizontal Property Act) or N.J.S.A. 46:8B-19 (Condominium Act), the filing fee shall be \$175 for the first separately assessed parcel of property of the property owner and \$50 for each additional separately assessed parcel of property of said property owner included in the complaint or if all of the parcels of the property owner are within the jurisdiction~~al limit~~ of the small claims division, \$35 for the first separately assessed parcel of property of the property owner and \$10 for each additional separately assessed parcel of property of said property owner included in the complaint.

(ii) Condominiums in Separate Ownership. Pursuant to Rule 8:3-5(a)(4) where property has

been assessed separately pursuant to the provisions of N.J.S.A. 46:8A-26 (Horizontal Property Act) or N.J.S.A. 46:8B-19 (Condominium Act) separately assessed properties that are not in common ownership may not be combined in one complaint or counterclaim. The filing fee for each such complaint or counterclaim shall be \$175 or if such complaint or counterclaim is within the jurisdiction[**al limit**] of the small claims division, the filing fee shall be \$35.

(3) . . . no change.

(4) . . . no change.

. . . no change.

Note: Adopted June 20, 1979 to be effective July 1, 1979; amended July 22, 1983 to be effective September 12, 1983; paragraph (d) redesignated (d)(1) and paragraph (d)(2) adopted November 5, 1986 to be effective January 1, 1987; paragraphs (a), (b) and (c) amended July 9, 1991 to be effective July 10, 1991; paragraphs (a), (b) and (c) amended, paragraph (c)(2) redesignated (c)(2)(i) and paragraph (c)(2)(ii) adopted July 10, 1997, to be effective September 1, 1997; **paragraphs (b) and (c)(2) amended , 2000 to be effective September 1, 2000.**

PART II—RULE AMENDMENTS RECOMMENDED AND ADOPTED PURSUANT TO
GUIDELINE 7

By order dated October 7, 1996, based upon comprehensive recommendations of the Committee, the Supreme Court authorized the establishment of a project in Bergen County to be known as the “Bergen County Property Tax Differentiated Case Management Pilot Program” and adopted a set of Differentiated Case Management (“DCM”) rules applicable to the Bergen County pilot program. The Bergen County DCM pilot program was applicable to only local property tax cases and was effective and commenced on January 1, 1997.

Since its implementation, the Tax Court Management Office reports that the DCM has generally improved the quality of case processing in Bergen County with less judicial involvement. Statistics compiled by the Tax Court Management Office through November 30, 1999 indicate that 99% of the Bergen County local property tax cases filed in 1997 have been disposed of compared to a disposition rate of 80% through that same date for cases filed in 1996, the last non-DCM case load for Bergen County. Statistics through November 30, 1999 for 1998 Bergen County local property tax cases show that 85% of those cases have been disposed of already.

Until about March 1999, the DCM administrative project was handled manually by Tax Court Management Office. In March 1999, the Tax Court Management Office’s computer system was upgraded and modified to implement new DCM software. Currently, the DCM program for Bergen County is managed electronically by the Tax Court Management Office. These technological developments, coupled with the initial success of the Bergen County pilot program, enable the expansion of the DCM pilot program to another county.

Notwithstanding the apparent success of the DCM pilot program for Bergen County, the Tax

Court continued to maintain a DCM working group and the Committee continued to maintain its own DCM Subcommittee in order to monitor and seek improvements to the DCM rules. Certain members of the Committee also participated in a bench/bar meeting in November 1998 in which DCM practice and procedure was discussed in detail. As a result of continuing input from the bar, the Tax Court Management Office and the Tax Court's DCM working group, the Committee made recommendations to the Supreme Court in a submission dated September 1, 1999 to expand the pilot program to include all Hudson County local property tax cases filed in the Tax Court on or after January 1, 2000 and to amend two of the DCM rules.

By Order dated October 12, 1999, the Supreme Court authorized expansion of the DCM pilot program to Hudson County effective January 1, 2000 and approved certain rule changes. In that same Order, the Supreme Court also changed the name of the pilot program to the "Local Property Tax Differentiated Case Management Pilot Program" and modified the name of the DCM rules to the "Tax Court DCM Program Rules."

The amendments to the Tax Court DCM Program Rules recommended to the Supreme Court by the Committee and adopted by the Supreme Court on October 12, 1999 to be effective January 1, 2000 follow. All new language is indicated in bold text.

Proposed Amendment to DCM Program R. 8:6-8—Authorizing a Period to Rectify Non-Compliance with the Initial Case Management Conference Requirement.

DCM R. 8:6-8 provides for an initial case management conference and DCM R. 8:6-9 provides for a mandatory settlement conference at which plaintiff's counsel must furnish a short-form appraisal from plaintiff's appraisal expert. Input from the bar indicated that compliance with these rules had some unintended onerous results, particularly since under DCM R. 8:8-5(a), a failure to comply with either of these rule requirements results in a denial of a request for an adjournment of the first trial date scheduled by the Tax Court Management Office. In order to provide more flexibility while still preserving the goals of the DCM process, the Committee feels that DCM R. 8:6-8 should be amended to provide for a period to rectify non-compliance with the requirement for the initial case management conference. The text of the amended rule follows.

8:6-8. Local Property Tax Cases; Initial Case Management Conference.

In all real property tax matters assigned to the standard track, an initial case management conference shall be held by counsel for the parties within 6 months after the complaint is filed. The initial case management conference may be conducted by telephone and shall include discussions of discovery issues, preliminary settlement positions and scheduling of the mandatory settlement conference as set forth in R. 8:6-9. The results of the initial case management conference shall be reported by the parties to the case manager in the form specified by the Tax Court within 10 days of the initial case management conference. **The parties shall have 10 days from the date of notice of noncompliance to rectify any noncompliance with the requirements of this rule. The failure of any party to receive a notice of noncompliance shall not relieve the party of the noncompliance.**

*Note: Bergen DCM Rule adopted October 7, 1996 to be effective January 1, 1997; **amended October 12, 1999 to be effective January 1, 2000.***

Proposed Amendments to DCM Program R. 8:6-9—Allowing a Demand for Reduction in Assessment Instead of an Appraisal.

DCM R. 8:6-8 provides for an initial case management conference and DCM R. 8:6-9 provides for a mandatory settlement conference at which plaintiff's counsel must furnish a short-form appraisal from plaintiff's appraisal expert. Input from the bar indicated that compliance with these rules had some unintended onerous results, particularly since under DCM R. 8:8-5(a), a failure to comply with either of these rule requirements results in a denial of a request for an adjournment of the first trial date scheduled by the Tax Court Management Office. The Committee feels that in certain cases it may be inappropriate for a plaintiff to incur the expense and effort of obtaining a short-form appraisal from an appraisal expert. Accordingly, the Committee recommended amending DCM R. 8:6-9 to allow a plaintiff to present a demand for reduction in assessment with support therefor. The text of the amended rule follows.

8:6-9. Local Property Tax Cases; Mandatory Settlement Conference.

In all local property tax cases assigned to the standard track, the parties shall hold a mandatory settlement conference approximately 5 months before the scheduled trial as set forth in the case management notice. The date for the mandatory settlement conference shall be fixed by the designated case manager and shall be provided to the parties in the form specified by the Tax Court. Counsel for all parties and the assessor or the taxing district's appraisal consultant shall be present at the mandatory settlement conference which shall be conducted in person at the office of the municipal assessor or such other place as agreed upon by the parties. Results of the mandatory settlement conference shall be reported by the parties to the case manager in the form specified by the Tax Court within 10 days of the mandatory settlement conference. At least seven (7) days prior to the date fixed for the mandatory settlement conference, plaintiff's counsel must furnish to defendant's counsel an appraisal by plaintiff's appraisal expert in the form specified by the Tax Court **or a demand for reduction in assessment with support therefor.**

*Note: Bergen DCM Rule adopted October 7, 1996 to be effective January 1, 1997; **amended October 12, 1999 to be effective January 1, 2000.***

PART III — RULE AMENDMENTS CONSIDERED AND REJECTED

Amendments to the following rules were considered and rejected by the Committee:

Proposed Amendment to R. 8:4-3(a)—Time for Filing a Counterclaim.

Pursuant to R. 8:3-2, the defendant in local property tax cases may file a counterclaim. R. 4:6-1 provides generally that a defendant shall serve an answer, including any counterclaim, within thirty-five days after service of the complaint. R. 8:4-3(a) provides, under the authority of N.J.S.A. 54:3-21, that a counterclaim may be filed within twenty days from the date of service of the complaint, even if the counterclaim is filed after the deadline for filing the complaint provided by N.J.S.A. 54:3-21. The Committee discussed whether the rules need to be amended to clarify the applicability of these counterclaim filing deadlines. After discussion, it was determined that the rules were sufficiently clear and no change was necessary.

Proposed Amendment to R. 8:4-2(a)—Calculation of Time For Filing Complaint.

N.J.S.A. 54:49-18 provides that the time to appeal to the Tax Court in a state tax case “shall commence from the date of the final determination by the Director.” It was suggested that R. 8:4-2(a) may be inconsistent with this provision because it provides that the time period for filing a complaint shall be calculated “from the date of service of the decision or notice of the action taken.” Under the rule, the phrase “notice of action taken” can reference the date of mailing rather than the date of the notice itself. Any action to clarify this purported inconsistency was rejected because of current motions pending before the Tax Court that may clarify or resolve the issue.

Proposed Freeze Act Procedures.

The Committee discussed whether a new rule needs to be adopted to more specifically address procedures under the Freeze Act, N.J.S.A. 54:51A-8. It was proposed that when an appeal is pending before the Tax Court for more than one year and the taxpayer elects to apply the Freeze Act to a base year so that it would apply to a subsequent year or years, the taxpayer should have to make an election in writing to be filed with the Tax Court no later than thirty days prior to the first scheduled trial date after the exchange of expert reports and the completion of discovery. The Committee concluded that this proposed change was not necessary and that any refinement of Freeze Act procedures in the rules should be deferred until the impact of recent statutory changes to the Freeze Act set forth in L.1999, c.208 has been reviewed and analyzed.

PART IV — OTHER ACTIONS AND RECOMMENDATIONS

The Committee took the following actions and/or made the following recommendations:

Proposed Standard Interrogatories in Farmland Assessment Cases and Exemption Cases.

In response to prior recommendations of this Committee, the Supreme Court adopted R. 8:6-1(5) on July 13, 1994 to be effective September 1, 1994. This rule provides that in local property tax cases, interrogatories and requests for production of documents shall be in the form and manner prescribed by the Tax Court. The Tax Court previously adopted standard form interrogatories in local property tax cases which were developed and recommended by a prior Committee. A working group of this Committee has now developed sets of standard form interrogatories to be used in exemption cases and farmland assessment cases before the Tax Court. The Committee reviewed these form interrogatories and recommends them for use by the Tax Court. By notice published September 27, 1999, the Tax Court notified the bar of the availability and required use of these additional form interrogatories. The form exemption and farmland assessment interrogatories are set forth in the Appendix to this Report.

Availability of Unpublished Opinions.

The Tax Court has been engaged in a project to summarize all unpublished opinions. The Committee recommends that the summaries of unpublished opinions developed by the Tax Court be made available to the public on the internet. It is the understanding of the Committee that the Administrative Office of the Courts is still considering the issue of publishing case summaries of this sort. When one party in a litigation is a governmental entity, unpublished opinions addressing a particular issue are frequently available to the governmental party but not the private litigant because the governmental entity was previously a party in a case with that issue. This is particularly so in state tax cases before the Tax Court where the New Jersey Division of Taxation is always the defendant. The Committee believes that public access to summaries of unpublished opinions will eliminate any actual or perceived inequalities in the availability of Tax Court information and decisions.

PART V — LEGISLATION

Legislation Supported.

The Committee voted to support the following legislative proposals:

1. S.673—Local Property Tax Appeal and Tax Court Procedures.

This bill proposed to adopt a series of statutory amendments dealing with local property tax appeal practice and procedure and Tax Court proceedings that have been recommended by the Committee for at least the last fourteen years. A summary of the Committee's proposed statutory amendments were set forth in Section IV C of the Committee's Biennial Report filed for the 1996-97 and 1997-98 Court Years. The bill was approved by the Legislature and signed into law by the Governor on September 17, 1999 as L.1999, c.208.

Legislation Opposed.

At its various meetings, the Committee voted to oppose the following legislative bills pending in the Senate and/or Assembly. The Committee's position on these pending bills was communicated to the Assistant Director of Legislative and Liaison Services in the Administrative Office of the Courts.

1. A.537—Limiting Local Property Tax Appeals.

This bill proposes to eliminate a property owner's right to appeal the assessed value of his or her property if an appeal was filed in the previous three tax years, unless the assessed value has increased by ten percent or more. The Committee opposes this legislation because it is an unfair procedural barrier to assessment review and access to the Tax Court. The Committee believes the current tax appeal system works effectively to eliminate frivolous tax appeals and that a complete bar of certain tax appeals is not a reasonable way to regulate the tax appeal process.

2. A.1050/S.1317—Approval Requirement.

These substantially identical bills require, among other things, any person appealing a local property tax assessment over \$750,000 to file a tax appeal along with a professional appraisal on or before March 1. If either the appeal or the professional appraisal is not filed by March 1, then the appeal is considered untimely. The Committee opposes this legislation because it believes it will unnecessarily increase the cost of property tax review proceedings, represents an unfair procedural barrier to assessment review and unduly interferes with the Tax Court's own rules.

3. A.3066—Limitation on Judiciary.

This bill, among other things, proposes to prevent judges of the Tax Court from substituting their own opinion of value for the opinion of expert witnesses without justifying the Court's valuation process. Judges rely upon many factors, including conclusions of experts, in determining the valuation of property for local property tax purposes. The Committee believes that the local property tax appeal system in New Jersey works efficiently and effectively and is a model for other tax court systems throughout the country. The Committee opposes this legislation because it is an unwarranted intrusion into the judicial decision-making process.

Proposed Amendment of N.J.S.A. 54:3-21 to Permit Direct Appeals of Class 4 Properties.

The Committee has frequently discussed the direct appeal jurisdiction of the Tax Court for local property tax cases. Currently, under N.J.S.A. 54:3-21, a tax appeal may be filed directly in the Tax Court only if the assessed valuation of the property subject to the appeal exceeds \$750,000. If the assessed valuation of the property falls below \$750,001, the taxpayer must first bring an appeal to the county board of taxation.

Many practitioners experienced in local property tax appeals have maintained that tax appeals involving commercial properties, industrial properties or apartments designed for the use of five families or more (referred to as “class 4 properties” in this Report based upon classifications set forth in N.J.A.C. 18:12-2.2), without regard to the assessed value of the property, often involve complex issues that inevitably reach the Tax Court for review and disposition. In the more complex cases involving class 4 properties, these practitioners believe that taxpayers should have the option to bypass the county board level and go directly to the Tax Court.

Accordingly, the Committee recommends that N.J.S.A. 54:3-21 be amended in order to expand the direct appeal jurisdiction of the Tax Court to include all class 4 properties without regard to the assessed valuation of those properties. The Committee feels that taxpayers should have the option to bring a class 4 property tax appeal directly to the Tax Court thereby avoiding the time and expense associated with an appeal to the county tax board. Of course, the taxpayer now has, and will continue to have, the option to first bring the appeal to the county tax board for all class 4 properties. In addition, the Committee feels this legislative recommendation complements, but is neither essential to nor necessitated by, the proposed amendments to R. 8:3-4(b) and (c), R. 8:11 and R. 8:12(b) and (c)(2) concerning the small

claims jurisdiction of the Tax Court set forth in this Report, *supra*. The text of the recommended amendment follows and is indicated in bold text.

54:3-21. Appeal by taxpayer or taxing district; petition; complaint.

A taxpayer feeling aggrieved by the assessed valuation of the taxpayer's property, or feeling discriminated against by the assessed valuation of other property in the county, or a taxing district which may feel discriminated against by the assessed valuation of property in the taxing district, or by the assessed valuation of property in another taxing district in the county, may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, appeal to the county board of taxation by filing with it a petition of appeal; provided, however, that any such taxpayer or taxing district may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, file a complaint directly with the Tax Court, if the assessed valuation of the property subject to the appeal exceeds \$750,000.00 **or if the property subject to the appeal is classified as commercial, industrial or apartments designed for the use of five families or more.** Within ten days of the completion of the bulk mailing of notification of assessment, the assessor of the taxing district shall file with the county board of taxation a certification setting forth the date on which the bulk mailing was completed. If a county board of taxation completes the bulk mailing of notification of assessment, the tax administrator of the county board of taxation shall within ten days of the completion of the bulk mailing prepare and keep on file a certification setting forth the date on which the bulk mailing was completed. A taxpayer shall have 45 days to file an appeal upon the issuance of a notification of a change in assessment. An appeal to the Tax Court by one party in a case in which the Tax Court has jurisdiction shall establish jurisdiction over the entire matter in the Tax Court. All appeals to the Tax Court hereunder shall be in accordance with the provisions of the State Uniform Tax Procedure Law, R.S.54:48-1, *et seq.*

If a petition of appeal or a complaint is filed on April 1 or during the 19 days next preceding April 1, a taxpayer or a taxing district shall have 20 days from the date of service of the petition or complaint to file a cross-petition of appeal with a county board of taxation or a counterclaim with the Tax Court, as appropriate.

PART VI — MATTERS HELD FOR CONSIDERATION

1. Continued review and consideration of Tax Court computerization, including on-line access to case status and electronic filing.
2. Attorney certification for practice before the Tax Court.
3. Consideration of what additional notices, or revisions to existing notices, and changes in the manner of service are warranted where a previously enjoyed exemption from local property tax is being denied by a municipal tax assessor.
4. Consideration of the proper application of “Chapter 123” (providing for discrimination relief pursuant to N.J.S.A. 54:3-22 and N.J.S.A. 54:51A-6 in local property tax appeals) where not all parcels in a single economic unit are being appealed (whether or not in the same taxing district or county), and what guidance should be provided by statute or rule. See Jaydor Corp. v. Millburn Tp., 17 N.J. Tax 378 (Tax Ct. 1998), appeal pending, and the cases cited therein.
5. Development of instructions and a worksheet to be made available to taxpayers state-wide (distributed at County Board offices, posted on the internet, *etc.*) regarding the application of Chapter 123 (providing for discrimination relief pursuant to N.J.S.A. 54:3-22 and N.J.S.A. 54:51A-6 in local property tax appeals) for use in determining whether to file tax appeals.

Respectfully submitted,

Michael A. Guariglia

Dated: January 18, 2000

Chairman

PART VII— MEMBERS OF THE SUPREME COURT
COMMITTEE ON THE TAX COURT

Michael A. Guariglia, Esq., Chair
Peter J. Zipp, Esq., Vice Chair

Hon. Michael A. Andrew, Jr., P.J.T.C.
Hon. Francine I. Axelrad, J.T.C.
Hon. Anthony M. Lario, J.T.C. (Ret.)
Hon. Marvin N. Rimm, J.T.C. (Ret.)
Robert J. Alter, Esq.
Anthony D. Andora, Esq.
Neil Becourtney, CPA
Frank Bucino
Paul T. Chan, Esq.
Anthony Crecco
Seth I. Davenport, Esq.
Susan A. Feeney, Esq.
Julian Gorelli, DAG
Martin Guhl
Alyce C. Halchak, Esq.
Steven R. Irwin, Esq.
Barry J. Krauser
John O. Lasser
Donald Linky
John R. Lloyd, Esq.
Gail L. Menyuk, DAG
Richard B. Nashel, Esq.
Richard L. Plotkin, Esq.
Joseph E. Rauch
Robert Romano, DAG
Robert H. Scrivens
Ulrich H. Steinberg, Jr.
Robert K. Thompson
Heather Turnbull, Esq.
Saul A. Wolfe, Esq.

AOC Staff: Doris A. DeBiasi
Lynne E. Allsop

APPENDIX

STANDARD INTERROGATORIES TO BE SERVED ON TAXPAYER
PURSUANT TO RULE 8:6-1(a)(5) FOR EXEMPTION CASES

Answer as of October 1st of the pretax year

State the name and address of the taxpayer claiming exemption from taxation (hereinafter referred to as the "taxpayer").

Set forth the state in which the taxpayer was incorporated or organized, the date of incorporation or organization, and the statute or law under which taxpayer was incorporated or organized. If the taxpayer is a foreign corporation or association, set forth the date of resignation in the Office of the New Jersey Secretary of State.

Attach a copy of the taxpayer's Certificate of Incorporation, Articles of Association and/or Corporate Charter and By-Laws. Include all amendments.

State in detail the basis for the taxpayer's assertion that the subject property is entitled to tax exemption. This statement should include, but not be limited to, a specification as to the statute at issue, the particular section of the statute on which the taxpayer is relying, and the facts which lead the taxpayer to believe it is entitled to exemption under such statute.

Provide copies of the taxpayer's financial statements for the year of appeal and the preceding two years.

Describe in detail all fundraising activities performed by or on behalf of the taxpayer during the tax year at issue and the preceding two (2) years. Include a description of each type of fundraising activity, the income generated by the activity, and the manner in which the income was distributed and used.

State whether the taxpayer is exempt from federal income tax under IRC §501(c)(3). If so, provide copies of all documentation sent to or received from any government entity concerning this exempt status.

State whether any officer or other person or entity receives any compensation, allowance or pecuniary profit from the taxpayer. If so, explain the reason or basis for payment of such compensation, allowance or profit, state the name and title of each such officer, person or entity, and, as to each, set forth the amount of compensation, allowance, and profit.

Set forth the names and addresses of taxpayer's board of directors and corporate officers.

For the tax year under appeal and each of the preceding two years, state the manner in which the surplus income generated by the subject property was distributed, the name and address of each person or entity to which a distribution was made, and the amount of each distribution.

State date the taxpayer acquired the subject property.

State name in which title to the subject property is vested.

Describe the subject property, including land area, and whether land is improved or vacant. If the land is vacant, specify land use, if any. If the land is improved with buildings, structures or other facilities, describe in detail each such building, structure or facility, including square foot area, number of floors, and use.

Describe in detail each use to which the subject property was put for the tax year under appeal and each of the preceding two years, whether or not such use is the basis for the taxpayer's claim of exemption. Include in such description the following:

a detailed list of the services provided or performed at the property;

whether any business was conducted on or at the property, and, if so, describe such business;

the area or portion of the property in or at which such use took place.

State whether any part of the land or building for which taxpayer seeks exemption was rented, leased or used or occupied by any person, corporation or entity other than the taxpayer. If so, set forth as to each tenant, occupant or user:

name and address,

the portion of the property leased, occupied or used,

the annual income derived from such tenancy, occupancy or use, and

the use by such tenant, occupant or user.

Provide a copy of all written leases and other agreements relating to occupancy or use, and describe in detail any agreement not in writing.

CERTIFICATION

I hereby certify that the foregoing statements are true and that all documents and reports annexed hereto are exact copies of the entire original document or report. I am aware that if any of the

foregoing statements made by me are willfully false, I am subject to punishment.

Dated:

By: _____

STANDARD INTERROGATORIES TO BE SERVED ON MUNICIPALITY
PURSUANT TO RULE 8:6-1(a)(5) FOR EXEMPTION CASES

Answer as of October 1st of the pretax year

Attach hereto copies of all letters, correspondence, communications and documents between the Municipality or the Assessor's Office and/or the County Tax Board relating to the grant or denial of exemption from real estate taxation for the subject property.

Attach hereto copies of all letters, correspondence, communications and documents between the Municipality or the Assessor's Office and/or the New Jersey Division of Taxation relating to the grant or denial of exemption from real estate taxation for the subject property.

In regard to Questions 1 and 2, if any such communications were oral, set forth the identity of the parties to each communication, the date of each communication, and the substance of each communication.

Describe in detail each and every record or document which was kept or maintained or prepared by the Assessor or anyone working for or on behalf of the Assessor in connection with the grant or denial of exemption from real estate taxation for the subject property for each of the year or years which are the subject of this appeal.

With respect to each document described in answer to the preceding question state the present location of the document; and the name, employer and job title or position of the person presently having custody thereof.

Attach hereto a copy of each document described in answers to the preceding two questions.

If you contend that the subject property is not exempt from real estate taxation under New Jersey law, set forth the facts upon which you rely in support of this contention.

Set forth all facts upon which you rely in support of the grant of exemption from real estate for the subject property in the _____ tax year.

If you contend that there has been a change in use for the subject property for the _____ tax year, set forth all facts upon which you rely in support of this contention.

CERTIFICATION

I hereby certify that the foregoing statements are true and that all documents and reports annexed hereto are exact copies of the entire original document or report. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated:

By: _____

STANDARD INTERROGATORIES TO BE SERVED ON TAXPAYERS PURSUANT
TO RULE 8:6-1(a)(5) FOR FARMLAND ASSESSMENT CASES

State the name and address of the owner(s) of the subject property during the year of appeal and the preceding two years.

Provide copies of the applications for assessment pursuant to the Farmland Assessment Act, N.J.S.A. 54:23-1 to 23.23 for the subject property for the year of appeal and the preceding two years and the dates such applications were filed with the Assessor for the taxing district.

Describe in detail each agricultural and/or horticultural activity conducted on the subject property during the year of appeal and the preceding two years, and set forth the size of the land area upon which each such activity was conducted.

Describe in detail any structures located on the subject property, the size of each such structure, the use to which each such structure is devoted, and the area of land upon which each such structure is located.

Set forth in detail the amount of gross income realized from the sale of the agricultural and/or horticultural products produced on the subject property for the year of appeal and the preceding two years, and set forth the name and address of each person or entity receiving such income and each person or entity from whom such income was received.

Attach documentation to support any claim of payments received under a soil conservation plan for the year of appeal and the preceding two years.

If qualification for farmland assessment is claimed on the basis that the property is used for boarding, rehabilitation or training of livestock, state whether taxpayer claims that such land is contiguous to land which independently qualifies for farmland assessment.

State whether any portion of the property for which farmland assessment is sought is used for any purpose in addition to agricultural and/or horticultural purposes including, but not limited to, recreational purposes.

If qualification for farmland assessment is claimed on the basis that the property is devoted to the production for sale of trees or other forest products other than Christmas trees, or is woodland which is not supportive and subordinate woodland:

State whether a copy of the application for farmland assessment for the tax year under appeal was filed with the Commissioner of the Department of Environmental Protection.

State whether the following documentation was submitted as part of the application for farmland assessment for the year of appeal and, if so, attach a copy of each document:

a Woodland Management Plan for the subject property;

a scaled map of the property showing the location of woodland activity and the soil group classes of the land;

a completed Woodland Data Form (form WD-1).

Set forth the date(s) upon which the subject property was inspected by the forester who prepared Woodland Management Plan or such other forester familiar with the Plan for the year under appeal and the preceding two years.

Indicate whether any agreements exist regarding the removal or sale of timber from the subject property for the tax year under appeal and/or the preceding two years, and, if so, attach copies of such agreements. If any such agreement is not in writing, set forth the date thereof, the names and addresses of the parties, and the terms thereof.

State whether there are any agreements, such as leases, regarding the use of the property and, if so, attach copies of such agreements. If any such agreement is not in writing, set forth the date thereof, the names and addresses of parties, and the terms thereof.

State the name and present address of each person known to you who has knowledge of facts bearing upon or relating to this appeal or the subject property and summarize the facts known to each.

State the name, address and field or area of expertise of each expert witness expected to testify on behalf of the taxpayer at the trial of this appeal, and set forth the qualifications of each.

Attach hereto copies of all expert reports prepared on your behalf, or in your possession, covering the subject property or any portion thereof, which reports were prepared by any expert named in answer to Question No. 12, during or with respect to the year of appeal, or either of the preceding two years, in connection with this or any other proceeding, or for any other reason.

Attach a copy of, or describe in detail, each document of which you have knowledge and which relates to or bears upon the subject matter of this appeal. The term "document" shall include, but not be limited to, photographs. Include in such description, the following:

the date of the document;

the nature of the document (e.g., letter, appraisal, memorandum, photograph, contract);

the name and address of the person who prepared the document;

when the document was prepared;

when the document was delivered;

to whom the document was delivered;

the name, address, employer and job title or position of the person having custody of the document;

a full summary of the contents of the document.

State the name, address and job title or position of the person answering these interrogatories.

State the name and telephone number of the person to contact in order to arrange for an inspection of the subject property.

CERTIFICATION

I hereby certify that the foregoing statements are true and that all documents and reports annexed hereto are exact copies of the entire original document or report. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated:

By: _____

STANDARD INTERROGATORIES TO BE SERVED ON MUNICIPALITIES
PURSUANT TO RULE 8:6-1(a)(5) FOR FARMLAND ASSESSMENT CASES

State the name and present address of each person known to the municipality who has knowledge of facts bearing upon or relating to this appeal or the subject property and summarize the facts known to each.

State the name, address and field or area of expertise of each expert witness expected to testify on behalf of the municipality at the trial of this appeal, and set forth the qualifications of each.

Attach hereto copies of all expert reports prepared on behalf of the municipality, or in the possession of the municipality, covering the subject property or any portion thereof, which reports were prepared by any expert named in answer to Question No. 2, during or with respect to the year of appeal or either of the preceding two years, in connection with this or any other proceeding, or for any other reason.

Attach a copy of all Property Record Cards for the subject property for the year under appeal and for the two prior years.

Attach a copy of or describe in detail each document of which you have knowledge and which relates to or bears upon the subject matter of this appeal. The term "document" shall include, but not be limited to, photographs. Include in such description, the following:

the date of the document;

the nature of the document (e.g. letter, appraisal, memorandum, photograph, contract);

the name and address of the person who prepared the document;

when the document was prepared;

when the document was delivered;

to whom the document was delivered;

the name, address, employer and job title or position of the person having custody of the document.

a full summary of the contents of the document.

State the reason or reasons for which the municipality denied taxpayer' application for farmland

assessment for the year of appeal.

State whether the subject property was inspected by the municipality at any time during the last three (3) years with regard to an application by the property owner for farmland assessment and if so, provide the names of the individuals who conducted such inspections, the dates of such inspections, the results of such inspections, and any documentation detailing the findings and conclusions regarding the inspection.

State the name, address and job or position with the municipality of the person answering these interrogatories.

CERTIFICATION

I hereby certify that the foregoing statements are true and that all documents and reports annexed hereto are exact copies of the entire original document or report. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated:

By: _____

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