

**BIENNIAL REPORT OF THE SUPREME COURT COMMITTEE  
ON THE TAX COURT OF NEW JERSEY**

**2018-2019 AND 2019-2020 COURT YEARS**

**SUBMITTED TO THE SUPREME COURT OF NEW JERSEY**

**DATE** January 21, 2020

The Supreme Court Committee on the Tax Court of New Jersey (the “Committee”) is comprised of members of the bench, tax bar (both public and private), state and local tax officials, and others concerned with the operation of the Tax Court of New Jersey. The Committee held three meetings beginning on October 18, 2018 and ending on September 24, 2019. The Committee Chair appointed six subcommittees: the General Tax Court Practice Subcommittee; the State Tax Practice Subcommittee; the eFiling/eCourts Subcommittee; the Legislative Subcommittee; the Standard Confidentiality Agreement Subcommittee and the Attorney Certification for Tax Court Practitioners Subcommittee.

The General Practice Subcommittee was chaired by William Rogers, Esq. and charged with determining whether any generic Part VIII Rules need amending due to case decisions and/or policy and procedure changes. The subcommittee submitted two proposed rule amendments for the full Committee to consider: R.8:6-1, to prohibit serving or answering discovery in small claims cases through eCourts; and R.8:6-6, to make the nomenclature of notices consistent with practice.

This subcommittee also considered amendments to several other rules but did not bring them to the full Committee for a vote as they were determined to be unnecessary or outside the scope of this Committee or were carried to the next Committee term. The two proposed amendments proved uncontroversial and were recommended by the full Committee without an opposing vote.

The State Tax Practice Subcommittee was chaired by Michael Guariglia, Esq. and charged with considering changes to Part VIII Rules applicable to state tax practice. This subcommittee proposed amendments to: R. 8:3-3, to clarify and reference R. 1:21-1(c) that an attorney is required to represent an entity, except for a sole proprietorship; R. 8:4-3 to add language clarifying the time to file responsive pleadings in state cases; R. 8:5-3 clarifying that the Attorney General must be served when the County Board is named as a party; and R. 8:12 to clarify that there is no fee for a small claims motion. The full Committee unanimously approved the recommendations.

The eFiling/eCourts Subcommittee was chaired by Amber Heinze, Esq. and considered whether to amend rules to reflect eCourts procedures. The subcommittee recommended amending R. 8:3-8 to comport with Directive #04-19, *Deletion of Documents in eCourts and Correction of Data in Associated Databases*, issued by Acting Director Glenn Grant, J.A.D. The subcommittee also raised several issues regarding eCourts Tax and inquired about possible enhancements. Such programming changes and upgrades were discussed during a meeting with the subcommittee chair, the Tax Court Presiding Judge, the Tax Court Clerk/Administrator and the Judiciary's technical staff in the Automated Trial Court Services Unit. While no additional rule amendments were proposed, the subcommittee's observations and

recommendations are an integral part of the ongoing development and operation of eCourts Tax.

The Legislative Subcommittee, chaired by Jeffrey M. Gradone, Esq., monitored legislative bills, which, if enacted, would affect practice in the Tax Court and might require Rule changes. No statutes were enacted during this Committee cycle that require a change to court rules relating to the Tax Court.

The Standard Confidentiality Agreement Subcommittee, chaired by Alex Genato, Esq., was charged with considering a standard form of a confidentiality agreement, with the goal of ensuring consistency and protecting the interests of all parties. While the subcommittee discussed several options for a standard template, it was unable to come to a consensus. This item will be carried to the next Committee term.

After careful consideration, the full Committee agreed it would be in the best interest of the public to offer certified experts in Tax Practice. The Attorney Certification for Tax Court Practitioners Subcommittee, chaired by Michael Benak, Esq., was charged with developing a proposal for the certification process as outlined by the Supreme Court Board on Attorney Certification. In furtherance of that determination, the full Committee unanimously approved proposed regulations and standards developed by the Attorney Certification Subcommittee. These will be

submitted to the Board to be vetted and moved forward through the established certification procedure.

## **RULE AMENDMENTS RECOMMENDED FOR ADOPTION**

### **A. Proposed Amendments to R. 8:3-3. General Form of Pleading**

Pursuant to R. 1:21-1(c), an attorney is required to represent an entity, except for a sole proprietorship. To clarify that R. 1:21-1(c) also applies to state tax and local property tax practice in the Tax Court, the State Tax Practice Subcommittee recommended adding a reference to this Rule in Part VIII. The full Committee voted unanimously to the subcommittee's proposal.

The proposed amendments follow.

### **R. 8:3-3. General Form of Pleading; Appearances in Court**

In addition to the special pleading requirements prescribed by these rules all pleadings shall generally accord as to form with the rules governing pleadings in the Superior Court. A pleading shall be signed by the attorney of record or, if not represented by an attorney, by the party. If a party is not represented by an attorney the pleading shall include the name, residence address and telephone number of the party. Except as provided by R. 1:21-1(c), an entity, however formed and for whatever purpose, other than a sole proprietorship shall neither appear nor file any paper in any action in the Tax Court except through an attorney authorized to practice in this State.

## **B. Proposed Amendments to R. 8:3-8. Amended and Supplemental Pleadings**

Directive #04-19, *Deletion of Documents in eCourts and Correction of Data in Associated Databases*, was issued to ensure the integrity of electronic records. The Directive requires a signed order before deleting a document from the electronic case jacket or correcting electronic data in a case management system. However, this Directive only applies to other court divisions and not to Tax Court. Subsequently, a Notice to the Bar *Tax Court - New Procedures and Forms for Deletion of Documents and Correction of Data* was issued October 2, 2019, standardizing Tax Court's procedures consistent with the principles set forth in Directive #04-19. The full Committee voted unanimously to recommend amending R. 8:3-8 to memorialize the Tax Court's procedures reflected in the October 2, 2019 Notice to the Bar.

The proposed amendments follow.



**R. 8:3-8 Amended and Supplemental Pleadings; Deletion of Documents and Corrections of Data**

(a) ...no change

(b) ...no change

(c) ...no change

(d) ...no change

(e) Deletions of Documents and Corrections of Data. An order for deletion of a document or for correction of data in eCourts or an associated database, shall be submitted either by motion on notice to the other parties in the case, or by consent order. Such orders may also be issued sua sponte by the court.

### **C. Proposed Amendments to R. 8:4-3. Time for Filing Responsive Pleadings**

R. 8:4-3 as currently written, requires the State to answer a cross claim before answering the Complaint, because the Rule does not reference counterclaims and cross claims. The State Tax Practice Subcommittee recommended expanding the rule to rectify this issue by adding counterclaims and cross claims specifically to state tax matters. The full Committee voted unanimously to recommend the subcommittee's proposal.

The proposed amendments follow.

### **R. 8:4-3. Time for Filing Responsive Pleadings**

The time for filing all pleadings other than the complaint, including answers to complaints filed under the Correction of Errors Law, N.J.S.A. 54:51A-7, shall be as prescribed by R. 4:6-1 and subject to R. 1:3-3 provided that:

(a) . . . no change.

(b) In a state tax matter (other than small claims cases) an answer to a complaint, counterclaim or crossclaim shall be served within 60 days after service of the complaint, counterclaim or crossclaim, as the case may be.

#### **D. Proposed Amendments to R. 8:5-3. On Whom Served**

R. 8:5-3(a)(4) pertaining to a complaint reviewing an action of the County Board of Taxation and R. 8:5-3(a)(6) pertaining to a complaint to review an order of the County Board of Taxation, require service on the Attorney General of the State of New Jersey. Members of the State Tax Practice Subcommittee reported that the Attorney General is often not served upon the filing of complaints that name the County Board of Taxation as a party. To make it clear that the Attorney General is to be served in these instances, the subcommittee recommended, and the full Committee voted unanimously, to add specific language to the Rule.

The proposed amendment follows.

**R. 8:5-3. On Whom Served**

(a) . . . no change

(1) . . . no change

(2) . . . no change

(3) . . . no change

(4) . . . no change

(5) . . . no change

(6) . . . no change

(7) . . . no change

(8) . . . no change

(9) A complaint which names the County Board of Taxation as a party shall be served upon the Attorney General of the State of New Jersey.

(b) . . . No change

(c) . . . No change

**E. Proposed Amendments to R. 8:6-1. Discovery: Exchange of Appraisals and Comparable Sales and Rentals**

R. 8:6-1(a)(2) and R. 8:6-1(a)(5) each prohibit uploading discovery demands or answers to eCourts in state tax cases and local property tax cases, respectively. This same language is absent in R. 8:6-1(a)(4) which pertains to Small Claims cases. To ensure consistency, the General Practice Subcommittee recommended, and the full Committee voted unanimously, to add similar language to R. 8:6-1 (a)(4).

The proposed amendments follow.

**R. 8:6-1 Discovery: Exchange of Appraisals and Comparable Sales and Rentals**

(a) Discovery

(1) . . . no change

(2) . . . no change

(3) . . . no change

(4) In local property tax cases assigned to the Small Claims Track under the provisions of R. 8:11, discovery shall be limited to the property record card for the subject premises, inspection of the subject premises, a closing statement if there has been a sale of the subject premises within three (3) years of the assessing date, the costs of improvements within three (3) years of the assessing date, income, expense and lease information for income-producing property and information relating to a claim of damage to the property occurring between October 1 of the pretax year and January 1 of the tax year pursuant to N.J.S.A. 54:4-35.1. The court in its discretion may grant additional discovery for good cause shown. In small claims cases, discovery shall not be served or answered on eCourts Tax.

(5) . . . no change

(6) . . . no change

(b) . . . no change

## **F. Proposed Amendments to R. 8:6-6. Local Property Tax Cases; Case Management Notice**

With the implementation of eCourts, Tax Court procedural practice had to change pertaining to the issuance of a “*Notice*” (formerly “*Trial Notice*”) and the issuance of a *Case Management Plan*. The current Rule is no longer consistent with practice and in fact, *The Case Management Plan* is issued first, and a *Notice* of the trial is issued later. To avoid confusion the subcommittee recommended, and the full Committee voted unanimously, to amend the rule to be consistent with actual practice.

The proposed amendments follow.



**R. 8:6-6. Local Property Tax Cases; Case Management Notice**

~~[Upon]~~ After the filing of a complaint, the Tax Court Management Office shall forward to the parties a case management ~~notice~~ plan in the form specified by the Tax Court. ~~[Forthwith upon the making of the track assignment, the Tax Court Management Office shall send written notice thereof to all parties in the action.]~~ If the case has been assigned to the standard, small claims, or farmland and exemption track, the ~~[notice]~~ case management plan shall state the date by which discovery is required to be completed pursuant to R. 8:6-1(a), the anticipated month and year of trial, the name of the case manager, and the requirements for case management and settlement conferences. The ~~[notice]~~ case management plan shall also advise that each party, including subsequently added parties, may apply for track reassignment pursuant to R. 8:6-7.

### **G. Proposed Amendments to R. 8:12. Filing fees**

R. 8:12 provides that a \$50 fee must be paid upon filing any motion in the Tax Court case but does not include the exception that there is no fee required to file a motion that is within the Small Claims jurisdiction. R. 1:43, *Filing and Other Fees Established Pursuant to N.J.S.A 2B:1-7* specifically indicates there is no motion fee for small claims cases in Tax Court. The full Committee unanimously voted to recommend amending R. 8:12 to specify the exception that there is no fee for a motion in a small claims case.

The proposed amendments follow.

## **RULE 8:12. FILING FEES**

(a) . . .no change

(b) Small Claims. A fee of \$50 payable to the Treasurer, State of New Jersey shall be collected by the Tax Court on the filing of a complaint or counterclaim when the case is alleged to be within the small claims jurisdiction pursuant to Rule 8:11. No fee shall be payable on the filing of any motion in a case 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) . . . no change

(d) . . . no change

## **RULE AND NON-RULE AMENDMENTS CONSIDERED AND REJECTED**

The General Practice Subcommittee considered several issues that commonly arise in Tax Court practice and would require amendments to the Rules to address. However, after further discussion, the subcommittee determined not to move several recommendations forward, primarily because statutory changes would be required and amending the statutes is generally outside the scope of this Committee. The subcommittee also agreed that addressing some issues via the court rules was unnecessary. The Committee may consider addressing the following Rule amendments at a future date when statutorily feasible or procedurally warranted:

**R. 8:5-3(a)(7). On Whom Served** Considered recommending that assessors and municipal clerks be required to register for eCourts.

**R. 8:7(e). Motions pursuant to N.J.S.A. 54:4-34.** Considered amending the rules to require that a municipal defendant plead a Chapter 91 issue as an affirmative defense.

**Clarify Discovery demands of R. 4:17 for Tax Court.** Considered clarifying to address discovery demands propounded on taxpayers by plaintiff municipalities.

**Misfiling County Board Appeals in the Tax Court.** Considered Rule amendment options for handling appeals erroneously filed with the Tax Court as Direct Appeals but should have been filed with the County Board.

**R. 8:3-5. Contents of Complaint; Specific Actions.** Considered recommending that a property with multiple lots and is one economic unit, be qualified as a direct appeal when the lots collectively exceed the \$1,000,000 threshold, rather than requiring a single lot exceed the threshold.

Respectfully Submitted,

*/s/ Joseph M. Andresini, P.J.T.C.*

Hon. Joseph M. Andresini, P.J.T.C.

## **2018-2020 Supreme Court Committee on the Tax Court**

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\* Died during 2018-2020 Committee Term