

**BIENNIAL REPORT OF THE
SUPREME COURT COMMITTEE ON THE TAX COURT OF NEW JERSEY
2016-2017 AND 2017-2018 COURT YEARS
SUBMITTED TO THE SUPREME COURT OF NEW JERSEY**

February 16, 2018

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 four meetings beginning on January 10, 2017, and ending on December 5, 2017. The Chairman appointed four Subcommittees: the General Tax Court Practice Subcommittee; the State Tax Practice Subcommittee; the Efiling Subcommittee; and the Legislation Subcommittee.

The General Practices Subcommittee was chaired by the Hon. Kathi F. Fiamingo, J.T.C. The Subcommittee proposed amendments to six Rules. The proposals proved uncontroversial, with all recommended by the full Committee without an opposing vote. The proposed amendments, which are set forth in detail below, clarify Rules to comport with recent Tax Court opinions, statutory provisions, and the implementation of eCourts Tax.

The State Tax Practice Subcommittee was chaired by Mitchell A. Newmark, Esq., and Deputy Attorney General Michael J. Duffy. The Subcommittee was charged with considering possible changes to the Court Rules applicable to State tax practice. The Subcommittee proposed amendments to R. 8:6-1 clarifying practice with respect to answering interrogatories, and prohibiting the exchange of discovery requests and responses on eCourts Tax. The Committee approved the recommendations.

The Efiling Subcommittee was chaired by the Hon. Michael J. Gilmore, J.T.C. The Subcommittee did not recommend any amendments to the Court Rules. The Subcommittee, however, raised a number of items with respect to eCourts Tax. Those items were relayed to the Tax Court Presiding Judge and Tax Court Clerk/Administrator, who consulted with the court’s technical staff regarding programing changes and upgrades. The Subcommittee’s

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

The Legislation 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 cycle of the Committee that require a change to Court Rules relating to the Tax Court.

RULE AMENDMENTS RECOMMENDED FOR ADOPTION

Although the Supreme Court, pursuant to R. 1:32-2A, approved the mandatory use of eCourts Tax to initiate all local property tax matters in which the plaintiff is represented by counsel, Part VIII of the Rules, applicable to the Tax Court, contains no reference to eCourts Tax. The Committee unanimously voted to recommend an amendment to R. 8:3-1, Commencement of Action, to alert counsel to the requirement that eCourts Tax be used to initiate local property tax matters. It was the view of the Committee that a member of the bar unfamiliar with Tax Court practice would look to this Rule to determine how to initiate an action in the Tax Court and should be alerted in the Rule to the requirement to use eCourts Tax. The proposed amendment notes that State tax matters continue to be initiated through the filing of a paper Complaint.

The recommended amendment follows:

R. 8:3-1. Commencement of Action

(a) An action is commenced by filing a complaint with the Clerk of the Tax Court. Pursuant to R. 1:32-2A, the Supreme Court has approved the mandatory use of eCourts Tax by attorneys to commence all local property tax matters in the Tax Court. All State tax matters are commenced through the filing of a paper complaint.

(b) (no change)

(c) (no change)

Pursuant to N.J.S.A. 54:3-21, a “taxpayer feeling aggrieved by the assessed valuation” on real property may file a complaint in the Tax Court challenging the assessment. This statute has been interpreted to allow parties other than the property owner to challenge an assessment on real property. In Village Supermarkets, Inc. v. Township of West Orange, 106 N.J. 628 (1987), the Court held that a tenant responsible for the payment of taxes on real property may file a challenge to an assessment on that property in certain circumstances. The Court held that the property owner must be put on notice of such complaints. Subsequent to the holding in Village Supermarkets, standing to file a challenge to an assessment has been extended to a mortgagee after default by the mortgager, Chemical Bank N.J., NA v. City of Absecon, 13 N.J. Tax 1 (Tax 1992); a court-appointed rent receiver, NNN Lake Center, LLC v. Township of Evesham, 28 N.J. Tax 82 (Tax 2014); and, in an unpublished Appellate Division opinion, to a contract purchaser of the property. Omega Self Storage of NJ, LLC v. Township of Lawrence, 2013 N.J. Super. Unpub. LEXIS 1653 (App. Div. 2013).

During the last Committee cycle, the Court adopted the Committee's recommendation to amend R. 8:5-3, On Whom Served, and R. 8:5-5, Proof of Service, to effectuate these opinions. The Committee unanimously recommends that the Court amend R. 8:3-5, Contents of Complaint; Specific Actions, to make this Rule consistent with the Rules amended last Committee cycle and to further effectuate the holdings of the opinions cited above.

The recommended amendment follows:

R. 8:3-5. Contents of Complaint; Specific Actions

(a) Local Property Tax Cases.

(1) The first paragraph of every complaint and counterclaim shall set forth the block, lot and street address of the property. A Case Information Statement in the form specified by the Tax Court shall be attached to the face of the complaint or counterclaim, and a copy of the County Board of Taxation judgment and memorandum of judgment or order or determination to be reviewed shall be attached to the complaint, except in matters to be directly reviewed by the Tax Court pursuant to N.J.S.A. 54:3-21. The complaint shall include the name of the owner, the name of the plaintiff if other than the owner, and the relationship of the plaintiff to the owner, the assessment, the type of property, the prior year(s) for which action is pending in the Tax Court for the same property and whether exemption or farmland qualification is claimed.

(2) (no change)

(3) (no change)

(4) (no change)

(b) (no change)

(c) (no change)

The holding in 1959 Highway 34, LLC v. Township of Wall, 29 N.J. Tax 506 (Tax 2016), clarified the statutory deadline for filing a direct appeal in the Tax Court in a local property tax matter arising from a county participating in the Assessment Demonstration Program, see N.J.S.A. 54:1-104. The Committee voted unanimously, with one abstention, to recommend that R. 8:4-1, Time for Filing Complaint, be amended to provide clear notice of the court's interpretation of the statute. In addition, by the same vote, the Committee recommended amending the Rule to track more closely the language of N.J.S.A. 54:3-21 with respect to the statutory time to file direct appeals in the Tax Court in local property tax matters.

The recommended amendment follows:

R. 8:4-1. Time for Filing Complaint

(a) Local Property Tax Matters.

(1) (no change)

(2) (no change)

(3) (no change)

(4) Complaints pursuant to the direct review provisions of N.J.S. 54:3-21(a)(1), and appeals pursuant to N.J.S. 54:3-21(a)(2) shall be filed on or before April 1 of the tax year or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later. ~~In a taxing district where a municipal-wide revaluation or municipal-wide reassessment has been implemented, complaints pursuant to the direct review provisions of N.J.S.A. 54:3-21 shall be filed on or before May 1 of the tax year.~~ Complaints seeking to review a notification of change in assessment pursuant to the provision of N.J.S.A. 54:3-21(a)(1) shall be filed within 45 days of the service of the notice of change in assessment. Service of the notice of change in assessment, when by mail, shall be deemed complete as of the date the notice is mailed, subject to the provisions of R. 1:3-3.

(5) In a taxing district where a municipal-wide revaluation or a municipal-wide reassessment has been implemented, complaints pursuant to the direct review provisions of N.J.S.A. 54:3-21(a)(1) shall be filed on or before May 1 of the tax year, or 45 days from the date the bulk mailing of notice of assessment is completed in the taxing district, whichever is later. This provision does not apply to taxing districts located in a county participating in the demonstration program established under N.J.S.A. 54:1-104, which shall be subject to the general provisions of subsection (4) above.

The Committee unanimously voted to recommend amendment of R. 8:4-3, Time for Filing Responsive Pleadings, to clarify the time in which a counterclaim may be filed in a direct appeal to the Tax Court in a local property tax matter. The filing deadline in these circumstances is established by statute. The current Rule does not fully explain the statutory deadline.

The recommended amendment follows:

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

The time for filing of all pleadings other than the complaint, including answers to complaints filed under the Corrections 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 ~~except~~ provided that

(a) All counterclaims in ~~in~~ a direct appeal of a local property tax matter pursuant to N.J.S.A. 54:3-21, shall be filed on or before April 1 unless the petition of appeal or complaint is filed on April 1 or during the 19 days next preceding April 1, in which case a taxpayer of a taxing district shall have a counterclaim may be filed within 20 days from the date of service the complaint to file a counterclaim. even if the counterclaim is filed after the deadline for filing the complaint provided by N.J.S.A. 54:3-21.

(b) (no change)

The holding in Fields v. Trustees of Princeton Univ., 29 N.J. Tax 284 (Tax 2016), clarified the method of calculating the filing fee for pleadings that challenge the grant or denial of a local property tax exemption for multiple parcels owned by the same entity, where the amounts of the assessments on the parcels are not also challenged. The Committee voted unanimously, with one abstention, to recommend an amendment to R. 8:12, Filing Fees, to reflect the court's decision.

In addition, N.J.S.A. 22A:5-1(a) prohibits the collection of a filing fee where a municipality files a counterclaim in a local property tax matter in the Tax Court. Rule 8:12 does not reflect this statutory provision. The Committee voted unanimously to recommend that R. 8:12 be amended to include the prohibition provided in the statute.

The recommended amendments follow:

R. 8:12. FILING FEES

(a) (no change)

(b) (no change)

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

(1) Real Property in Common Ownership. If a complaint or counterclaim in an action to review a real property tax assessment includes more than one separately assessed parcel of property in common ownership pursuant to Rule 8:3-5(a)(2), (3) and (4), the filing fee shall be \$250 for the first separately assessed parcel of property included in the complaint and \$50 for each additional separately assessment parcel of property of said property owner included in the complaint; provided, however, that in the event the sole cause of action shall be the appeal of the grant or denial of an exemption, the fee for additional separately assessed parcels of property shall not be imposed.

(2) (no change)

(3) (no change)

(4) (no change)

(d) Matters exempt from fee.

(1) No fee shall be paid upon the filing of a complaint within the small claims jurisdiction in an action where the sole issue is eligibility for any homestead credit, rebate, or refund program administered by the Division of Taxation or a senior citizen's or veteran's exemption or deduction.

(2) No fee shall be paid by a taxing district upon the filing of a counterclaim or any responsive pleading.

The Committee unanimously voted to recommend that R. 8:6-1, Discovery; Exchange of Appraisals and Comparable Sales and Rentals, be amended to provide that all interrogatory answers first state the interrogatory and then, beneath the interrogatory, state the answer to that interrogatory. The Committee was of the view that this constitutes a best practice, and also provides the parties (and the court in the event of a discovery motion) with a clear and easily accessible rendition of the party's discovery exchange.

In addition, the Committee voted unanimously, with a partial abstention, to recommend amendment of R. 8:6-1 to direct the parties not to serve or answer discovery via eCourts Tax. Certain members of the bar and self-represented parties have developed a practice of using eCourts Tax to serve and answer discovery. eCourts Tax was not designed for the purpose of exchanging discovery between litigants. Of particular concern is that any item uploaded to eCourts Tax becomes part of the public record of the underlying matter, available for inspection by those with access to eCourts Tax. Discovery responses, particularly in Tax Court matters, can contain sensitive and/or confidential financial information, including tax returns, leases, appraisal, and other financial data that might not otherwise become part of the public record in the case.

The recommended amendments follow:

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

(a) Discovery. Discovery may be taken in accordance with the provisions of R. 4:10-1 through R. 4:18-2 and R. 4:22 through R. 4:25 insofar as applicable except as follows:

(1) (no change)

(2) In state tax cases the 180 days for completion of discovery shall commence to run on the date the answer is served. At any time the court, in its discretion or by agreement between the parties, may extend or reopen the time to complete discovery. Completion of discovery shall be coordinated with pretrial conferences and memoranda. Requests for admission shall be served in a separate document so titled and shall not be combined with interrogatories, document production requests, or any other material. All interrogatory answers shall first state the question and then beneath the question state the answer to that question. In state tax cases, discovery shall not be served or answered on eCourts Tax.

(3) (no change)

(4) (no change)

(5) In local property tax cases, interrogatories and requests for production of documents shall be in the form and manner prescribed by the Tax Court. In local property tax cases, discovery shall not be served or answered on eCourts Tax.

(6) (no change)

(b) (no change)

Respectfully submitted,



Hon. Patrick DeAlmeida, J.T.C. (t/a App. Div.)

MEMBERS OF THE SUPREME COURT COMMITTEE ON THE TAX COURT

Hon. Patrick DeAlmeida, J.T.C. t/a App. Div.
Peter J. Zipp, Esq., Vice Chair
Marlene G. Brown, Senior Deputy Attorney General, Vice Chair

Hon. Mala Sundar, J.T.C.
Hon. Kathi F. Fiamingo, J.T.C.
Hon. Michael J. Gilmore, J.T.C.
Robert J. Alter, Esq.
Heather L. Anderson, Deputy Attorney General
Farah Ansari, Esq.
James Bartek, CPA
Paul T. Beisser, MAI, CRE
Michael D. Benak, Esq.
Richard Carabelli
M. Sidney Donica, Esq.
Michael J. Duffy, Deputy Attorney General
James L. Esposito, Esq.
Susan A. Feeney, Esq.
John J. Ficara, Esq., Acting Director, Division of Taxation
A. Paul Genato, Esq.
Jeffrey M. Gradone, Esq.
Amber N. Heinze, Esq.
Diane R. Helsey, AMANJ
Lee Holtzman, Esq.
Edward J. Kuch, III, Esq.
John A. McCann
Mitchell A. Newmark, Esq.
Leah Robinson, Esq.
William T. Rogers, III, Esq.
Michael I. Schneck, Esq.
Peter J. Ulrich, Esq.
Gerald A. Vitarello
Patricia Wright, Deputy Director, Division of Taxation

AOC Staff:

Cheryl A. Ryan, Clerk/Administrator, Tax Court of New Jersey
Lynne E. Allsop, Court Executive, Tax Court of New Jersey