

**BIENNIAL REPORT OF THE
SUPREME COURT COMMITTEE ON THE TAX COURT
2008-09 AND 2009-10 COURT YEARS
SUBMITTED TO THE SUPREME COURT OF NEW JERSEY**

January 15, 2010

Table of Contents

INTRODUCTION	1
I. RULE AMENDMENTS RECOMMENDED FOR ADOPTION	4
A. Proposed Amendment to R. 8:3-2—Pleadings Allowed	4
B. Proposed Amendment to R. 8:3-4—Contents of Complaint Generally	6
C. Proposed Amendment to R. 8:3-5—Contents of Complaints in Specific Actions	8
D. Proposed Amendment to R. 8:11—Small Claims Division Practice and Procedure.....	10
II. RULE AMENDMENTS CONSIDERED AND REJECTED	12
III. OTHER ACTIONS AND RECOMMENDATIONS.....	14
A. Availability of Unpublished Opinions.....	14
IV. LEGISLATION	15
A. Legislation Supported.....	15
B. Legislation Opposed.....	16
1. A.2348—Limitation on Judiciary	16
2. A.2162—Limiting Local Property Tax Appeals	17
C. Legislation Proposed.....	18
1. Proposed Amendment of N.J.S.A. 51A-9 to Clarify Time for Taking Real Property Tax Cases To Tax Court after Municipal Revaluation or Reassessment.....	18
2. Proposed Amendment of N.J.S.A. 54:4-63.11 and 54:4-63.39 to Increase Direct Appeal Jurisdiction Amount in Added and Omitted Assessment Cases	20
3. Proposed Amendment of N.J.S.A. 54:3-27 to Authorize Relaxing Tax Payment Requirement	23

4.	Reorganization and Revision of N.J.S.A. 54:4-3.6 to Clarify Property Exemption Applicable to Nonprofit Organizations	26
5.	Proposed Amendment of N.J.S.A. 54:51A-10 and N.J.S.A. 54:51A-19 to Clarify Tax Court Fees	31
V.	MATTERS HELD FOR CONSIDERATION	33
VI.	MEMBERS OF THE SUPREME COURT COMMITTEE ON THE TAX COURT	34

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 held five meetings during the period beginning March 4, 2009 and ending January 12, 2010. Numerous topics and issues were covered and discussions were detailed and vigorous. The Chairman reappointed and continued a Small Claims Jurisdiction Subcommittee, chaired by Joseph C. Small, P.J.T.C. (Retired). Other subcommittees were appointed on an as-needed basis.

The Committee continued to engage in a comprehensive examination of the rules governing practice in the Tax Court as well as a variety of other issues. Specifically, the Committee discussed issues relating to the review of state and local tax assessments, proposed rule amendments, proposed legislation, case management and court procedures, court forms, small claims procedures, and rules and procedures governing public access to court and administrative records. The project which consumed a substantial amount of the Committee’s time was the continuing review and study of issues relating to local property tax small claims jurisdiction and the drafting of revised small claims jurisdiction rules.

The Committee’s focus on and review of small claims jurisdiction dates back to its Biennial Report to the Supreme Court for the 1998-1999 and 1999-2000 Court Years, in which the Committee recommended that the small claims jurisdiction of the Tax Court be modified in local property tax cases. The Committee addressed what it felt to be an increasing problem concerning the improper designation of filed local property tax 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. At that time, small claims jurisdiction for all cases (local property tax cases and

state tax cases) was based upon the amount of tax in controversy, which could not exceed the sum of \$2,000. However, given the interaction of factors such as value, ratios of assessment to true value, and tax rates, the tax amount at stake in local property tax cases was frequently not readily ascertainable by the Tax Court Management Office, thereby making classification difficult at the time of intake. The Committee recommended 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's recommendations to modify R. 8:3-4(b) and (c), R. 8:11 and R. 8:12(b) and (c)(2) were adopted by the Supreme Court effective September 5, 2000. The adopted rules limited the local property tax small claims jurisdiction of the Tax Court to 1 to 4 family residences ("class 2 property," N.J.A.C. 18:13-2.2) and farmland residences ("class 3A farm residences," N.J.A.C. 18:12-2.2). The prior "\$2,000 tax in controversy limitation" was eliminated. See 1998-1999 and 1999-2000 Biennial Report pages 3-5, 10-17. The \$2,000 limitation in non-local property tax cases remained unchanged.

Upon adoption of these rules, the Supreme Court requested a report from the Presiding Judge of the Tax Court and the Tax Court Administrator as to the operation of the revised rules and procedure. The Presiding Judge and the Tax Court Administrator provided a report dated January 8, 2002, which set forth statistical evidence of two years suggesting that the new small claims jurisdiction rules were having their intended effect. However, the Committee noted in its Biennial Report to the Supreme Court for the 2000-01 and the 2001-02 Court Years that it would continue to monitor filing data in the small claims and regular divisions of the Tax Court in order to continue to review and evaluate small claims jurisdiction.

The Committee considers full access to the Tax Court by all taxpayers to be a significant issue. Since 2002, every sitting Committee has continued to monitor filing data, receive feedback from the Tax Court Management Office and actively solicit and receive feedback from Tax Court practitioners concerning small claims jurisdiction. The Committee received input from its standing Small Claims Jurisdiction Subcommittee and continued to review and discuss proposals to modify the small claims jurisdiction of the Tax Court.

Feedback from Tax Court practitioners over the past several years has suggested that small business taxpayers seeking to appeal assessments with small amounts of tax at stake have found bringing an appeal to the Tax Court less feasible due to higher filing fees and costs related to more formal discovery procedures. Under these circumstances, the Committee has developed a solution which still addresses the administrative and procedural concerns expressed by the Committee in 2000, but also makes small claims jurisdiction available to all property classifications based upon readily ascertainable standards.

As set forth in proposed amendments to R. 8:3-4 and R. 8:11, small claims jurisdiction will continue to be available to properties classified as family or farm residence. In addition, all other properties on which the prior year's taxes are less than \$25,000 will now have access to the Small Claims Division. The Committee also concluded that the small claims jurisdictional amount in state tax cases should be raised from \$2,000 to \$5,000. Since adoption of the \$2,000 amount in 1979, inflation has caused a substantial increase in dollar values and New Jersey's two primary state taxes (Gross Income Tax and the Sales And Use Tax) have seen their rates substantially increased by the Legislature.

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.

A. Proposed Amendment to R. 8:3-2—Pleadings Allowed.

R. 8:3-2 requires a case information statement to be attached to a complaint. R. 1:5-6(c) provides procedures for returning nonconforming papers filed by a party under certain circumstances. One of those circumstances is the failure to include a “completed Case Information Statement as required by R. 4:5-1 in the form set forth in Appendix XII to these rules.” R. 1:5-6(c)(1)(B). The Tax Court does not use a form of case information statement specified in R. 4:5-1 and Appendix XII. Accordingly, the Committee proposes to amend R. 8:3-2 to expressly incorporate the nonconforming paper procedure in R. 1:5-6(c) when a complaint fails to attach a case information statement.

The text of the proposed amendment follows.

8:3-2. Pleadings Allowed

(a) Generally. Pleadings shall consist of the complaint and such responsive pleadings as shall be filed in the action. A case information statement shall be attached to the complaint. **A complaint that fails to include a case information statement shall be treated as a nonconforming paper that shall be returned stamped “Received but not filed (date)” as provided in R. 1:5-6(c).**

(b) No change.

(c) No change.

Note: Adopted June 20, 1979 to be effective July 1, 1979; amended July 16, 1981 to be effective September 14, 1981; text allocated into paragraphs (a) and (b) and amended, paragraph (a) and (b) captions adopted, and new paragraph (c) adopted July 9, 2008 to be effective September 1, 2008; **paragraph (a) amended , 2010 to be effective September 1, 2010.**

B. Proposed Amendment to R. 8:3-4—Contents of Complaint Generally.

The Committee proposes to amend R. 8:3-4(c) to set forth how the proposed modified small claims jurisdiction proposed for R. 8:11 should be recited in the complaint. In addition, R. 8:3-4(c)(2) provides for nonconforming paper treatment as provided in R. 1:5-6(c) if the complaint fails to confirm the prior year's taxes when small claims jurisdiction is based on prior year's taxes.

The text of the proposed amendment follows.

8:3-4. Contents of Complaint Generally

(a) No change.

(b) No change.

(c) Small Claims Classification.

(1) In state tax cases the complaint shall state whether the amount of refund claimed or the taxes or additional taxes sought to be set aside or the amount in controversy, as the case may be, with respect to any year, exceeds the sum of [~~\$2,000~~] \$5,000 exclusive of interest and penalties.

(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 or, if small claims jurisdiction is based on the prior year's taxes, there shall be included with the complaint a copy of the prior year's final tax bill or the current year's notice of assessment or a statement certifying the prior year's taxes. Where small claims jurisdiction is based on the prior year's taxes, a complaint that fails to confirm the prior year's taxes as specified in this subparagraph, shall be treated as a nonconforming paper that shall be returned stamped "Received but not filed (date)" as provided in R. 1:5-6(c).

(d) No change.

(e) No change.

(f) 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 July 5, 2000 to be effective September 5, 2000; paragraph (c)(2) amended , 2010 to be effective September 1, 2010.

C. Proposed Amendment to R. 8:3-5—Contents of Complaints in Specific Actions.

The Committee proposes to amend R. 8:3-5(a)(3) in order to conform the rule to the revised direct appeal jurisdiction amount in local property tax cases as a result of the amendment to N.J.S.A. 54:3-21 signed into law on January 16, 2010 (L.2009, c.251).

The text of the proposed amendment follows.

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

(a) Local Property Tax Cases.

(1) No change.

(2) No change.

(3) In cases of direct review by the Tax Court pursuant to N.J.S.A. 54:3-21, the complaint shall contain an allegation that the assessed valuation of the property for which direct review is sought exceeds **[\$750,000] \$1,000,000**. A complaint for direct review may include in separate counts separately assessed, contiguous properties in common ownership, in the same or different taxing districts, provided that the assessed valuation of one of such separately assessed, contiguous properties exceeds **[\$750,000] \$1,000,000**.

(4) No change.

(b) No change.

Note: Adopted June 20, 1979 to be effective July 1, 1979, Paragraphs (a)(1), (2) and (3) amended July 8, 1980 to be effective July 15, 1980; paragraph (a)(1) and (3) amended July 15, 1982 to be effective September 13, 1982; paragraph (a)(4) amended July 22, 1983 to be effective September 12, 1983; paragraph (b) amended November 1, 1985 to be effective January 2, 1986; paragraphs (a)(1), (2) and (4) amended November 5, 1986 to be effective January 1, 1987; paragraph (b)(2) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a)(1), (b)(1) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (a)(4) amended July 10, 1997 to be effective September 1, 1997; paragraph (b)(1) amended July 9, 2008 to be effective September 1, 2008; **paragraph (a)(3) amended , 2010 to be effective September 1, 2010.**

D. Proposed Amendment to R. 8:11—Small Claims Division Practice and Procedure.

The Committee proposes to amend R. 8:11 to (i) increase to \$5,000 the amount in controversy for small claims jurisdiction in state tax cases, and (ii) to expand small claims jurisdiction in local property tax cases to include property tax cases in which the prior year's taxes for the subject property was less than \$25,000.

The text of the proposed amendment follows.

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

(a) (1) The small claims division will hear all state tax cases in which the 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]** **\$5,000** exclusive of interest and penalties.

(2) 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 **and all other local property tax cases in which the prior year's taxes for the subject property were less than \$25,000. Cases raising exemption or abatement issues are not eligible for the small claims division.** Local property tax cases in the small claims division shall be assigned to the small claims track.

(b) No change.

(c) No change.

(d) No change.

(e) 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 track or transfer the matter to the standard track.

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 July 5, 2000 to be effective September 5, 2000; amended July 28, 2004 to be effective September 1, 2004; paragraph letters added, paragraphs (a), (b), (c) and (e) amended July 9, 2008 to be effective September 1, 2008; **paragraph (a) amended , 2010 to be effective September 1, 2010.**

PART II. RULE AMENDMENTS CONSIDERED AND REJECTED

1. The Committee discussed and rejected a proposal to modify or eliminate the mandatory settlement conference required for local property tax cases in R. 8:6-8. It was suggested that these mandatory settlement conferences were not working and were not effective. The Committee felt that eliminating the conference and reports required by R. 8:6-8 would be contrary to the policy and goals of the Tax Court's Differentiated Case Management procedures and that any such change should only be considered after the passage of more time and experience with the rule.

2. The Committee discussed a proposal to amend R. 8:3-5(a) to require that a copy of the current tax bill for the year at issue be attached to all local property tax complaints. While it remains Tax Court policy to request that a copy of the tax bill be produced, the Committee felt that codifying this practice in the rule would be burdensome and raise some practical difficulties because taxpayers frequently do not have a hard copy of the current tax bill readily available. The rejection of this rule amendment is not inconsistent with the Committee's proposed amendments to the Tax Court's small claims jurisdiction in local property tax cases because those proposed rule amendments refer to the prior year's taxes and allow three alternatives to document the prior year's taxes, including providing a copy of the prior year's tax bill.

3. On January 16, 2010, the Governor signed into law an amendment to N.J.S.A. 54:3-21 (L.2009, c.251) which raised the direct appeal jurisdiction amount in local property tax cases before the Tax Court from \$750,000 to \$1,000,000. However, the Legislature failed to simultaneously amend N.J.S.A. 54:4-63.11 (direct appeal jurisdiction from added assessments) and N.J.S.A. 54:4-63.39 (direct appeal jurisdiction from omitted assessments) to make their direct appeal thresholds consistent with the \$1,000,000 amount in N.J.S.A. 54:3-21.

The Committee discussed amending R. 8:2 and R. 8:5-3 to change the direct appeal amount referenced in those rules from \$750,000 to \$1,000,000, but determined it could not proceed with these amendments because those rules refer to N.J.S.A. 54:4-63.11 and 54:4-63.39. The Committee felt it could not amend these rules until the Legislature acted to amend N.J.S.A. 54:4-3.11 and 54:4-63.39. These legislative amendments are proposed in Part C of this Report.

PART III. OTHER ACTIONS AND RECOMMENDATIONS

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

A. Availability of Unpublished Opinions.

A majority of the Committee continues to recommend that unpublished opinions prepared by the Tax Court be made available to the public on the internet.

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. The Committee also realizes that rules differentiating between the authority of and citation to unpublished opinions versus published opinions are essential if the designation of some but not all opinions for publication is to continue. It would appear that the publicly circulated state law journals now summarize many unpublished opinions and that the Tax Court should not ignore this reality.

A minority of the Committee, which includes all of the Judges on the Committee, believes that although all written opinions of the Tax Court should be available to the public, internet publication of opinions of the Tax Court designed as “unpublished” should be consistent with the practice of the trial divisions of the Superior Court. That practice is to publish on the internet those opinions designated for internet publication by the trial judge. This minority opinion is consistent with the recommendations set forth at page 50 of the Report of the Supreme Court Committee on Public Access to Court Records dated November 29, 2007.

PART IV. LEGISLATION

A. Legislation Supported.

At its various meetings, the Committee did not vote to support any legislative bills pending in the Senate and/or the Assembly.

The Committee did review, discuss and decide to take no position on Senate Bill No. 61, which proposed to change the interest rate on property tax refunds, and Assembly Bill No. 4313 (substitute for S.2711), which proposed to streamline procedures for partial reassessments and to raise the direct appeal jurisdiction to the Tax Court to \$1 million. The Committee notes that A.4313 was approved by the Legislature and signed into law by the Governor on January 16, 2010 as L.2009, c.251.

B. 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 positions on these pending bills were communicated to the Administrative Office of the Courts.

1. A.2348—Limitation on Judiciary.

This bill proposes to amend N.J.S.A. 54:1-35(c)(6), 54:1-35.35 and 46:4-1(d) in order to make several changes to assessment practices for real property in New Jersey and includes a provision 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. Generally, 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 (i) these changes are generally not necessary and (ii) the section addressing judicial discretion is an unwarranted intrusion into the judicial decision-making process. Judges of the Tax Court are by statute required to have special qualifications, knowledge, and experience in matters of taxation. N.J.S.A. 2B:13A-6(b). To have a statute require that judges have an expertise which another statute restrains them from using does not merit further comment.

2. A.2162—Limiting Local Property Tax Appeals.

This bill proposes to amend N.J.S.A. 54:3-21 in order 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 that 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.

C. Legislation Proposed.

1. Proposed Amendment of N.J.S.A. 54:51A-9 to Clarify Time for Taking Real Property Tax Cases to Tax Court After Municipal Revaluation or Reassessment.

The Legislature amended N.J.S.A. 54:3-21 on January 11, 2008 (L.2007, c.256) to extend the filing date for the Tax Court's direct appeal jurisdiction in property tax cases to May 1 if the taxing district has implemented a municipal-wide revaluation or municipal-wide reassessment. However, the Legislature failed to amend N.J.S.A. 54:51A-9b, which also addresses the direct appeal jurisdiction of the Tax Court. In order to be consistent and avoid confusion, the Committee proposes that N.J.S.A. 54:51A-9b be amended to extend the filing date for the Tax Court's direct appeal jurisdiction in property tax cases to May 1 in the case of a municipal-wide revaluation or municipal-wide reassessment.

The Committee also proposes to amend N.J.S.A. 54:51A-9b to reflect the Legislature's amendment of N.J.S.A. 54:3-21 on January 16, 2010 (L.2009, c.251) raising the direct appeal jurisdiction amount in local property tax cases from \$750,000 to \$1,000,000.

The text of the recommended amendments follow and are indicated in bold text.

54:51A-9. Time for taking real property tax cases to tax court.

a. Except as otherwise provided in this section, a complaint seeking review of adjudication or judgment of the county board of taxation shall be filed within 45 days of the service of the judgment.

b. Direct appeals to the Tax Court of assessments of property with an assessed valuation in excess of [~~\$750,000.00~~] **\$1,000,000** as provided in R.S. 54:3-21 shall be filed on or before April 1 of the tax year or 45 days from the date the bulk mailing of notifications of assessment is completed for the taxing district, whichever is later, or with regard to added or omitted assessments, on or before December 1 of the year of levy, or 30 days from the date the collector of the taxing district completes the bulk mailing of tax bills for added assessment or omitted assessments, whichever is later. **Direct appeals involving a taxing district where a municipal-wide revaluation or municipal-wide reassessment has been implemented shall be filed on or before May 1 of the tax year or 45 days from the date the bulk mailing of notifications of assessment is completed for the taxing district, whichever is later.**

c. All real property tax cases not provided for herein shall be taken in the manner and time prescribed for such appeals by the rules of the Tax Court.

2. Proposed Amendment of N.J.S.A. 54:4-63.11 and 54:4-63.39 to Increase Direct Appeal Jurisdiction Amount in Added and Omitted Assessment Cases.

On January 16, 2010, the Governor signed into law an amendment to N.J.S.A. 54:3-21 (L.2009, c.251) which raised the direct appeal jurisdiction amount in local property tax cases before the Tax Court from \$750,000 to \$1,000,000. However, the Legislature failed to simultaneously amend N.J.S.A. 54:4-63.11 (direct appeal jurisdiction from added assessments) and N.J.S.A. 54:4-63.39 (direct appeal jurisdiction from omitted assessments) to make the direct appeal thresholds in these statutes consistent with the \$1,000,000 amount in N.J.S.A. 54:3-21. In order to be consistent and avoid confusion, the Committee proposes that N.J.S.A. 54:4-63.11 and 54:4-63.39 be amended to change the direct appeal jurisdictional amount in added and omitted assessment cases from \$750,000 to \$1,000,000. The text of the recommended amendments follow and are indicated in bold text.

54:4-63.11. Appeals from added assessments

Appeals from added assessments may be made to the county board of taxation on or before December 1 of the year of levy, or 30 days from the date the collector of the taxing district completes the bulk mailing of tax bills for added assessments, whichever is later, and the county board of taxation shall hear and determine all such appeals within one month after the last day for filing such appeals; provided, however, that appeals from added assessments may be made directly to the Tax Court on or before December 1 of the year of levy, or 30 days from the date the collector of the taxing district completes the bulk mailing of tax bills for added assessments, whichever is later, if the aggregate assessed valuation of the property exceeds **[\$750,000] \$1,000,000**. Within ten days of the completion of the bulk mailing of tax bills for added assessments, the collector 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. Appeals to the Tax Court from the judgment of the county board of taxation shall be made within 45 days from the date fixed for final decisions by the county board of taxation on appeals from added assessments. In all other respects such appeals shall be governed by the laws concerning appeals from real property assessments.

54:4-63.39. Appeals to county board of taxation from omitted assessments

Appeals from assessor's omitted assessments may be made to the county board of taxation on or before December 1 of the year of levy, or 30 days from the date the collector of the taxing district completes the bulk mailing of tax bills for omitted assessments, whichever is later, and the county board shall hear and determine all such appeals within one month after the last day for filing such appeals; provided, however, that appeals from assessor's omitted assessments may be made directly to the Tax Court on or before December 1 of the year of levy, or 30 days from the date the collector of the taxing district completes the bulk mailing of tax bills for added assessments, whichever is later, if the aggregate assessed valuation of the property exceeds ~~[\$750,000]~~ \$1,000,000. Within ten days of the completion of the bulk mailing of tax bills for omitted assessments, the collector 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. Appeals to the Tax Court from the judgment of the county board of taxation shall be made within 45 days from the date fixed for final decisions by the county board of taxation on appeals from assessor's omitted assessments. In all other respects such appeals shall be governed by the laws concerning appeals from real and personal property assessments.

3. Proposed Amendment of N.J.S.A. 54:3-27 to Authorize Relaxing Tax Payment Requirement.

The Committee believes that the Tax Court's power to relax the tax payment requirement as the interests of justice require should be specifically set forth in N.J.S.A. 54:3-27. It is a legislative recommendation, which was inadvertently omitted from comprehensive legislative recommendations previously made by the Committee and enacted into law in 1999 as chapter 208 of the Laws of 1999. Specifically providing for the power to relax the tax payment requirement in N.J.S.A. 54:3-27 is consistent with the relaxation power added by the amendment of N.J.S.A. 54:51A-1 as part of that same 1999 comprehensive legislation. This legislative amendment has been proposed in prior Biennial Reports of the Committee. The text of the recommended amendment follows and is indicated in bold text.

54:3-27. Payment of tax pending appeal

A taxpayer who shall file an appeal from an assessment against him shall pay to the collector of the taxing district no less than the total of all taxes and municipal charges due, up to and including the first quarter of the taxes and municipal charges assessed against him for the current tax year in the manner prescribed in R.S. 54:4-66.

A taxpayer who shall file an appeal from an added or omitted assessment shall, in order to maintain an action contesting the added or omitted assessment, pay to the collector of the taxing district all unpaid prior years' taxes and all of the taxes for the current year as said taxes become due and payable, exclusive of the taxes imposed under the added or omitted assessment.

If an appeal involves Class 3B (Farm Qualified) or Classes 15A, B, C, D, E and F (Exempt Property as defined in R.S. 54:4-52) and the subject of the appeal is statutory qualification, the taxpayer shall not be required to meet the payment requirements specified herein.

The collector shall accept such amount, when tendered, give a receipt therefor and credit the taxpayer therewith, and the taxpayer shall have the benefit of the same rate of discount on the amount paid as he would have on the whole amount.

Notwithstanding the foregoing, the county board of taxation **or the Tax Court in a matter before the court** may relax the tax payment requirement and fix such terms for payment of the tax as the interests of justice may require. If the county board of taxation refuses to relax the tax payment requirement and that decision is appealed, the Tax Court may hear all issues without remand to the county board of taxation as the interests of justice may require.

The payment of part or all of the taxes upon any property, due for the year for which an appeal from an assessment upon such property has been or shall hereafter be taken, or of taxes for subsequent years, shall in nowise prejudice the status of the appeal or the rights of the

appellant to prosecute such appeal, before the county board of taxation, the Tax Court, or in any court to which the judgment arising out of such appeal shall be taken, except as may be provided for in R.S. 54:51A-1.

4. Reorganization and Revision of N.J.S.A. 54:4-3.6 to Clarify Property Exemption Applicable to Nonprofit Organizations.

The Committee believes the organizational structure of N.J.S.A. 54:4-3.6 is confusing and warrants revision. This proposal is intended to revise the existing structure of N.J.S.A. 54:4-3.6 without affecting the meaning, purpose or interpretation of the statute as currently written. Consistent with that approach, and notwithstanding that the Committee believes the current language in N.J.S.A. 54:4-3.6 is outdated, offensive and politically incorrect, the language utilized in the existing statute was retained as much as possible. This legislative amendment has been proposed in prior Biennial Reports of the Committee. The text of the recommended revision follows in its entirety.

54:4-3.6 Exemption of property of nonprofit organizations

The following property shall be exempt from taxation under this chapter:

- a. 1. All buildings actually used for colleges, schools, academies or seminaries, provided that if any portion of such buildings is leased to profit-making organizations or otherwise used for purposes which are not themselves exempt from taxation, said portion shall be subject to taxation and the remaining portion only shall be exempt.
2. All buildings actually used for historical societies, associations or exhibitions, when owned by the State, county or any political subdivision thereof or when located on land owned by an educational institution which derives its primary support from State revenue.
3. All buildings actually and exclusively used for public libraries.
4. All buildings actually and exclusively used for asylum or schools for feeble-minded or idiotic persons and children.
5. All buildings used exclusively by any association or corporation formed for the purpose and actually engaged in the work of preventing cruelty to animals.
6. All buildings actually and exclusively used by volunteer first-aid squads, which squads are or shall be incorporated as associations not for pecuniary profit.
7. (i) All buildings actually used in the work of associations and corporations organized exclusively for the moral and mental improvement of men, women and children provided that if any portion of a building used for that purpose is leased to profit-making organizations or is otherwise used for purposes

which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion only shall be exempt.

(ii) All buildings owned or held by an association or corporation created for the purpose of holding the title to such buildings as are actually and exclusively used in the work of two or more associations or corporations organized exclusively for the moral and mental improvement of men, women and children.

8. (i) All buildings actually used in the work of associations and corporations organized exclusively for religious purposes, including religious worship, or charitable purposes, provided that if any portion of a building used for that purpose is leased to a profit-making organization or is otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion shall be exempt from taxation, and provided further that if any portion of a building is used for a different exempt use by an exempt entity, that portion shall also be exempt from taxation.

(ii) All buildings owned by a corporation created under or otherwise subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and actually and exclusively used in the work of one or more associations or corporations organized exclusively for charitable or religious purposes, which associations or corporations may or may not pay rent for the use of the premises or the portions of the premises used by them.

9. All buildings actually used in the work of associations and corporations organized exclusively for hospital purposes, provided that if any

portion of a building used for hospital purposes is leased to profit-making organizations or otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion only shall be exempt.

As used in this section “hospital purposes” includes health care facilities for the elderly, such as nursing homes; residential health care facilities; assisted living residences; facilities with a Class C license pursuant to P.L. 1979, c. 496 (C.55:13B-1 et al.), the “Rooming and Boarding House Act of 1979”; similar facilities that provide medical, nursing or personal care services to their residents; and that portion of the central administrative or service facility of a continuing care retirement community that is reasonably allocable as a health care facility for the elderly.

10. The buildings, not exceeding two, actually occupied as a parsonage by the officiating clergyman of any religious corporation of this State, together with the accessory buildings located on the same premises.

b. The land whereon any of the buildings mentioned in subsection a. are erected, and which may be necessary for the fair enjoyment thereof, and which is devoted to the purposes above mentioned and to no other purpose and does not exceed five acres in extent.

c. The furniture and personal property in said buildings mentioned in subsection a. if used in and devoted to the purposes therein mentioned.

d. All property owned and used by any nonprofit corporation in connection with its curriculum, work, care, treatment and study of feeble-minded, mentally

retarded, or idiotic men, women, or children shall also be exempt from taxation, provided that such corporation conducts and maintains research or professional training facilities for the care and training of feeble-minded, mentally retarded, or idiotic men, women or children.

e. Provided, in case of all the foregoing, the buildings, or the lands on which they stand, or the associations, corporations or institutions using and occupying them as aforesaid, are not conducted for profit, except that the exemption of the buildings and lands used for charitable, benevolent or religious purposes shall extend to cases where the charitable, benevolent or religious work therein carried on is supported partly by fees and charges received from or on behalf of beneficiaries using or occupying the buildings; provided the building is wholly controlled by and the entire income therefrom is used for said charitable, benevolent or religious purposes. The foregoing exemption shall apply only where the association, corporation or institution claiming the exemption owns the property in question and is authorized to carry out the purposes on account of which the exemption is claimed or where an educational institution, as provided herein, has leased said property to a historical society or association or to a corporation organized for such purposes and created under or otherwise subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes.

5. Proposed Amendment of N.J.S.A. 54:51A-10 and N.J.S.A. 54:51A-19 to Clarify Tax Court Fees.

Statutory provisions concerning Tax Court fees are set forth in N.J.S.A. 22A:5-1 (L.1993, c.74, §2). Generally, the filing fee for commencement of proceedings in the Tax Court, other than Small Claims Division proceedings, is the same as the fee for proceedings in the Superior Court, Law Division. Additional fees, Small Claims Division fees and other fee matters are to be established by court rules. The fee for filing a complaint in the Tax Court is \$200, which is the fee for filing a complaint in the Law Division of the Superior Court. See N.J.S.A. 22A:2-6. It has come to the Committee's attention that, when this statutory fee schedule was adopted in 1993, the Legislature failed to amend or repeal N.J.S.A. 54:51A-10 and N.J.S.A. 54:51A-19 which fixed the fee for filing the first paper in the Tax Court at \$75. In all other respects, the provisions of N.J.S.A. 22A:5-1 are the same as the provisions of N.J.S.A. 54:51A-10 and N.J.S.A. 54:51A-19.

In order to eliminate this statutory conflict and inconsistency, the Committee proposes to amend both N.J.S.A. 54:51A-10 and N.J.S.A. 54:51A-19 to simply cross-reference N.J.S.A. 22A:5-1. Alternatively, N.J.S.A. 54:51A-10 and N.J.S.A. 54:51A-19 can be repealed in their entirety. These legislative amendments have been proposed in prior Biennial Reports of the Committee. The text of the recommended amendments follows, with new language indicated in bold text and deleted language in brackets.

54:51A-10. Fees

Filing fees in the Tax Court shall be established in accordance with R.S. 22A:5-1.

[Upon the filing or entering of the first paper or proceeding in any action or proceeding in the tax court hereunder, the plaintiff or any person filing a counterclaim shall pay to the clerk of the court, for use of the State, \$75.00 for the first paper filed by him, which shall cover all fees payable therein, except a lesser fee may be provided by rule of court, and except further that a taxing district shall not be required to pay a filing fee upon the filing of a counterclaim or upon the filing of any responsive pleading. Other or additional fees may be established by rules of court, except where a lesser fee is provided by law or rule of court, that fee shall be paid. The foregoing fees shall not be applicable to any proceeding in the small claims division. The fees in the small claims division shall be established pursuant to rules of court.]

54:51A-19. Fees

Filing fees in the Tax Court shall be established in accordance with R.S. 22A:5-1.

[Upon the filing or entering of the first paper or proceeding in any action or proceeding in the tax court hereunder, the plaintiff or any person filing a counterclaim shall pay to the clerk of the court, for use of the State, \$75.00 for the first paper filed by him, which shall cover all fees payable therein, except a lesser fee may be provided by rule of court, and except further, that no filing fee shall be required upon the filing of a responsive pleading by a taxing district.]

PART V. MATTERS HELD FOR CONSIDERATION

1. Continued review and consideration of Tax Court computerization, including on-line access to case status and electronic filing.
2. Continued review and consideration of availability of unpublished opinions.
3. Continued review and consideration of the impact of new R. 1:38 on public access to Tax Court records and practice before the Tax Court.
4. Continued review and consideration of administrative and procedural issues raised by the Gloucester County assessment pilot program.
5. Continued review and consideration of practice and discovery procedures in state tax cases.

Respectfully submitted,

/s/ Michael A. Guariglia

Michael A. Guariglia
Chairman

Dated: January 15, 2010

PART VI. MEMBERS OF THE SUPREME COURT COMMITTEE ON THE TAX COURT

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