NEW JERSEY LAW REVISION COMMISSION

Draft Tentative Report
Relating to a
Mandatory Property Tax Refund

November 08, 2019

The New Jersey Law Revision Commission is required to "[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it" and to propose to the Legislature revisions to the statutes to "remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions." N.J.S. 1:12A-8.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **January 07, 2020.**

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. Please send comments concerning this Report or direct any related inquiries, to:

Jennifer Weitz, Counsel
New Jersey Law Revision Commission
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07102
973-648-4575
(Fax) 973-648-3123
Email: jdw@njlrc.org
Web site: http://www.njlrc.org

Executive Summary

This project arose after a review of the New Jersey Tax Court's decision in *Hanover Floral v. E. Hanover Twp.*[1] In that case, the Tax Court addressed whether a municipality is required, pursuant to N.J.S. 54:4-54, to issue a property tax refund to a property owner who mistakenly overpays his or her property taxes.

Despite the use of the word "may" in the statute, the Tax Court ruled that such a refund is mandatory. Refunds, however, are subject to a three-year statute of limitations.

This project is intended to clarify the statute by recommending a revision of the current language, which is permissive, to reflect the Tax Court's decision.

Statute

N.J.S. 54:4-54. Correction of errors; assessment against or payment on wrong property; refund

> Where by mistake property real or personal has been twice entered and assessed on the tax duplicate, the governing body of the taxing district or county board of taxation may order and cause the tax record to be corrected and if the tax has been twice paid the governing body of the taxing district shall refund the excessive payment without interest. Where by mistake an assessment intended for one parcel has been placed upon another, the governing body may cancel the erroneous assessment, return without interest any money paid by one not the owner of the parcel intended to be assessed, and enter upon the record the assessment and tax against the proper parcel, after a hearing upon five days' notice to the owner. *Where one person has by mistake paid the tax on the property of another supposing it to be his own, the governing body after a hearing, on five days' notice to the owner,* ***may*** *return the money paid in error without interest and restore the record of the assessment and tax against the property in the name of the true owner,* provided the lien of the tax has not expired and no transfer or encumbrance has been put on record against the property since the date of the payment in error. No assessment of real or personal property shall be considered invalid because listed or assessed in the name of one not the owner thereof, or because erroneously classed as the land of an unknown or nonresident owner. [Emphasis added.]

[1] *Hanover Floral v. East Hanover Township*, 30 N.J. Tax 181, 184.

Background

Hanover Floral ("Plaintiff") has operated in East Hanover Township ("Township") since 1928.[2] It is located on Block 96, Lot 98 of the Township Official Tax Map.[3] In 1998, property adjacent to Hanover Floral was approved for a subdivision, on Block 96 Lots 99 through 102.[4] As agreed between the developer (a non-party to the action) and the Township, Lot 100 was to be dedicated and conveyed to the Township upon completion of the development.[5] Hanover Floral had used part of adjoining Lot 100 for more than 30 years.[6] In 1999, Plaintiff filed an adverse possession claim against the developers, claiming a portion of Lot 100.[7] The suit was settled by subdividing Lot 100 into two pieces; the contested parcel was conveyed to the Plaintiff, and the balance remained dedicated to the Township.[8] By deed filed in 2001, Plaintiff's contested parcel was incorporated with its main lot (Lot 98). The Official Tax Map was amended accordingly.[9]

In 2001, the Tax Assessor mistakenly listed the Plaintiff as the owner of newly configured Lot 100 and thereafter sent tax bills for that lot to the Plaintiff.[10] Both the Plaintiff and the plaintiff's bookkeeper believed that the tax bills it received for Lot 100 were only for the disputed portion it acquired through adverse possession, and therefore paid the bills from 2001 to 2011.[11]

In 2011 Plaintiff applied for a loan, and a title search was ordered.[12] The title company identified the discrepancy and the rightful owner of Lot 100, the developer.[13] Plaintiff's attorney brought the matter to the Township's Tax Assessor, who admitted the mistake.[14] In April 2012, the Tax Assessor advised Plaintiff to file an appeal in order to receive a refund.[15] On numerous occasions between October 2011 and May 2013 the Plaintiff notified the Township and its attorney of the error and specified the amount Plaintiff had mistakenly paid.[16] In December 2012, the Plaintiff filed suit against the Township to obtain a refund.[17]

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[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] *Id.* at 184-85
[7] *Id.*at 185
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.* at 185-86
[15] *Id.* at 186
[16] *Id.*
[17] *Id.*

In 2013, the Plaintiff stopped paying taxes on Lot 100, and soon after received delinquency notices from the Township.[18] From July 2014 until October 2014 the Plaintiff and the Township corresponded regarding the discrepancy.[19] Ultimately the Township threatened to publish Plaintiff's name in the local newspaper as a tax delinquent if it did not pay taxes on Lot 100.[20] On October 31, 2014, Plaintiff paid $4,152.45 to the Tax Collector.[21]

By late 2003, the developer was in substantial compliance with the approved subdivision plan, and conveyed Lot 100.[22] However, the Township did not authorize the acquisition until May 2015.[23] In February 2016, the Township cancelled the outstanding taxes on Lot 100.[24] The Township then filed a motion to dismiss or alternatively for summary judgment dismissing Plaintiff's complaint with prejudice.[25] Plaintiff opposed the motion.[26] In December 2016 the Chancery Court transferred the case to the Tax Court, as the Tax Court had participated in earlier proceedings between the parties.[27]

Analysis

The Court held that a plain reading of N.J.S. 54:4-54 indicated that Plaintiff paid property taxes "by mistake," as defined in the statute.[28] It then quoted the American Heritage Dictionary definition of "mistake" for additional support that Plaintiff paid the property taxes of another—the developer—because it believed it was paying taxes on its own property.[29] The Court, in trying to determine whether Plaintiff had constructive notice of the discrepancy based on its annual tax bills from 1998 to 2003, noted that Plaintiff's property taxes increased steadily.[30] As well, there was no unusual increase between 2000 and 2001, when Plaintiff acquired part of Lot 100.[31] Thus, the Court was satisfied that Plaintiff did not, and did not have reason to, know that it was paying the taxes of another taxpayer.[32] As a result, the Court held that N.J.S. 54:4-54 does not give a municipality discretion to provide a refund.[33]

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[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.* at 187
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.* at 189.
[29] *Id.* at 191.
[30] *Id.* at 193.
[31] *Id.* at 193-94.
[32] *Id.* at 194.
[33] *Id.* at 195.

Although Plaintiff mistakenly paid taxes from 2001-2012, the Court was constrained in its authority to order a refund based on the Appellate Court's decision in *Cerame v. Township Committee of Tp. Of Middletown in County of Monmouth*, requiring that N.J.S. 54:4-54 and N.J.S. 54:51A-7 be read together, since both statutes "correct the same wrongs."[34] As a result, the Court granted Plaintiff a refund of taxes paid in the year in which it filed its complaint, and the three years prior.[35]

Initial Outreach

This project proposes a modification to N.J.S. 54:4-54, so that the statute reads as mandatory rather than permissive. Staff sought preliminary input from knowledgeable and interested stakeholders regarding this subject matter. These individuals included members of the New Jersey State Bar Association's Real Tax Practice and Procedure Committee, the New Jersey State League of Municipalities, the New Jersey Institute of Local Government Attorneys, the New Jersey Association of Counties, and the tax assessors in each of New Jersey's 21 counties.

Initial feedback from the Tax Assessors in both Somerset and Monmouth counties expressed support for the project, with the three-year statute of limitations as required by the *Cerame* court.

One of the commenters noted that municipalities may face numerous instances of this sort, and in the aggregate, without any time limit, such mistakes would be costly for municipalities to absorb. Another commenter, a lawyer in private practice and an Officer of the New Jersey Institute of Local Government Attorneys, agreed with the Tax Court's ruling, and emphasized the need for a three-year limitation. He noted that the taxpayer bears some responsibility for ensuring that his or her bill is correct.

[34] *Id.* at 198, quoting *Cerame v. Township Committee of Tp. Of Middletown in County of Monmouth*, 349 N.J.Super 486, 494 (App. Div. 2002).
[35] *Id.* at 198.

Appendix

The proposed modifications to **N.J.S. 54:4-54** (Correction of errors; assessment against or payment on wrong property; refund) are shown with ~~strikethrough~~ and underlining, as follows:[36]

a. Where by mistake property real or personal has been twice entered and assessed on the tax duplicate, the governing body of the taxing district or county board of taxation ~~may~~ shall order and cause the tax record to be corrected and if the tax has been twice paid the governing body of the taxing district shall refund the excessive payment without interest.

b. Where by mistake an assessment intended for one parcel has been placed upon another, the governing body ~~may~~ shall cancel the erroneous assessment, return without interest any money paid by one not the owner of the parcel intended to be assessed, and enter upon the record the assessment and tax against the proper parcel, after a hearing upon five days' notice to the owner.

c. Where one person has by mistake paid the tax on the property of another supposing it to be his own, the governing body after a hearing, on five days' notice to the owner, ~~may~~ shall return the money paid in error without interest and restore the record of the assessment and tax against the property in the name of the true owner, provided the lien of the tax has not expired and no transfer or encumbrance has been put on record against the property since the date of the payment in error.

d. No assessment of real or personal property shall be considered invalid because listed or assessed in the name of one not the owner thereof, or because erroneously classed as the land of an unknown or nonresident owner.

e. All of the monetary refunds listed in subsections a. through c. are subject to a three-year statute of limitations, which shall be computed as a refund for the tax year in which the governing body has been notified by the taxpayer of the error, and the three years prior.

[36] A special thank you to Matthew Clark, Monmouth County Tax Assessor, for contributing to the proposed language.