

**To: New Jersey Law Revision Commission**  
**From: Jennifer Weitz, Counsel**  
**Re: Update to the Draft Final Report Regarding Property Tax Refunds and the Proposed Modification to N.J.S. 54:4-54**  
**Date: July 20, 2020**

## MEMORANDUM

### Background

At the December 2019 Commission meeting, a Draft Final Report proposed modifications to N.J.S. 54:4-54, to clarify that a municipality must refund property taxes mistakenly paid by a taxpayer.<sup>1</sup> This project was approved by the Commission based on the decision of the Tax Court in *Hanover Floral Co. v. East Hanover Township*.<sup>2</sup> In that case, a property owner mistakenly paid taxes on an adjacent lot due to an incorrect tax map.<sup>3</sup> The Court held that despite permissive language in the statute, the municipality was required to furnish a refund to the taxpayer.<sup>4</sup>

The Report recommends that a taxpayer be refunded for the year in which the governing body has been notified of the mistake, and the three years prior, as per the decision of the Tax Court: “[...] whether a Taxpayer brings a complaint under *N.J.S.A. 54:4-54* or *N.J.S.A. 54:51A-7*, the Court may only grant a refund for the taxes paid for the year in which the complaint is filed and the three years prior.”<sup>5</sup> The *Hanover* Court cited the language of the Appellate Division in *Cerame v. Township Committee of Middletown*, which stated that “[A] suit for the correction of mistakes in real estate tax assessment, whether filed in the Law Division under *N.J.S.A. 54:4-54* or in the Tax Court under *N.J.S.A. 54:51A-7*, is governed by the three-year limitations period contained in the latter statute.”<sup>6</sup>

When the Commission discussed this project, Commissioner Rainone suggested that any language regarding the statute of limitations for such refunds should be consistent with the statutory language regarding property tax appeals.<sup>7</sup> Staff was authorized to engage in additional research to confirm that the approach followed by the Court, and incorporated in the Report, was consistent with similar statutory provisions.<sup>8</sup>

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<sup>1</sup> See NEW JERSEY LAW REVISION COMMISSION (2019) ‘Property Tax Refund’. *Minutes of NJLRC meeting 19 Dec. 2019*, Newark, New Jersey.

<sup>2</sup> *Hanover Floral Co. v. East Hanover Twp.*, 30 N.J. Tax 181 (2017), as corrected (Feb. 13, 2018).

<sup>3</sup> *Id.* at 185.

<sup>4</sup> *Id.* at 194-95.

<sup>5</sup> *Id.* at 198.

<sup>6</sup> *Cerame v. Twp. Comm. of Twp. of Middletown in Cty. of Monmouth*, 349 N.J. Super. 486, 495 (App. Div. 2002).

<sup>7</sup> See NEW JERSEY LAW REVISION COMMISSION (2019) ‘Property Tax Refund’. *Minutes of NJLRC meeting 19 Dec. 2019*, Newark, New Jersey.

<sup>8</sup> *Id.*

## Relevant New Jersey Statutes

In New Jersey, N.J.S. 54:3-27.2 governs refunds resulting from a successful appeal from an assessment on real property. The statute requires that “the respective taxing district shall refund any excess taxes paid...”<sup>9</sup> It also requires payment of interest, and provides the method by which interest is calculated.<sup>10</sup> Finally, it requires the taxing district to refund a residential property owner within 60 days of the date of final judgment.<sup>11</sup> It is silent, however, regarding the number of years in which excess taxes were paid that are eligible to be refunded to the taxpayer.

Other statutes pertaining to the timing of tax refunds can be grouped as follows:

- *Correction of errors*: N.J.S. 54:51A-7 allows corrections to address typos, errors in transposing, and mistakes in tax assessments for up to three years after the tax year in which a complaint is filed.<sup>12</sup>
- *Statute of limitations for filing a refund*: both N.J.A.C. 18:2-5.2 and N.J.S. 54:49-14 state that a taxpayer may file a claim within four years of any original or additional tax assessed.
- *Refunds from a municipality*: N.J.S. 54:51A-8 and N.J.S. 54:3-27.2 both require a taxing district to refund a residential taxpayer within 60 days of the date of final judgment.
- *Refund of erroneous payment*: N.J.S. 54:35-10 states that an application for repayment must be made within three years from the date of payment or when a court determines that a decedent had no interest in property on which tax was paid. N.J.S. 54:49-16 states that a tax director has two years from the date of payment collected erroneously or illegally to certify to a comptroller that the taxpayer is entitled to a refund.

The *Hanover* Court explained that although it was bound by the Appellate Division’s decision in *Cerame*, it was not persuaded that N.J.S. 54:4-54 should be read *in pari materia* with N.J.S. 54:51A-7, as the latter addresses mistakes that are mechanical and therefore more readily discoverable by an attentive taxpayer.<sup>13</sup> The *Hanover* Court further explained that the legislative intent behind N.J.S. 54:4-54 was for the remedy to “extend indefinitely.”<sup>14</sup> The Court noted that the Legislature had amended this statute twice, in 1946 and 1979, and at both times had declined either to repeal the statute or to impose a statute of limitations upon the relief provided.<sup>15</sup> However, the Court fashioned its ruling to reflect the Appellate Division decision.<sup>16</sup>

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<sup>9</sup> N.J.S. 54:3-27.2.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See *Hanover*, 30 N.J. Tax at 198; see also *Cerame*, 349 N.J. Super. at 494.

<sup>13</sup> *Hanover*, 30 N.J. Tax 181, 200 at n6.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* (“Trial courts are free to disagree with appellate opinions; they are not free to disobey.”)

## **Conclusion**

Based on the research summarized above, Staff has been unable to locate a statutory provision governing property tax refunds that varies from the scheme contemplated by the *Hanover* Court. Staff seeks further guidance from the Commission regarding any additional areas of research that it would like Staff to pursue, or any modifications that should be made before releasing the Final Report.