

REPORT AND RECOMMENDATIONS

RELATING TO THE TAX COURT

Final Report 1991

**NEW JERSEY LAW REVISION COMMISSION
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INTRODUCTION

The Tax Court was established by statute in 1978 as a court of limited jurisdiction under Article VI, Section I, paragraph 1 of the New Jersey Constitution. The court succeeded to the jurisdiction of the Division of Tax Appeals, an administrative agency in the executive branch.

This project is a continuation of the Commission's previous work revising the statutes relating to the Supreme Court and the Superior Court and correcting obsolete references to the abolished county and county district courts, now pending before the Legislature as S1347 and S1348, respectively.

The Commission recommendations include revision of the Tax Court statutes to clarify the jurisdiction and powers of the court and to eliminate transitional provisions which are no longer necessary. The revised statutes would be enacted as part of new Title 2B Courts.

TITLE 2B - COURTS

CHAPTER 13 - TAX COURT

2B:13-1 Establishment; jurisdiction

a. A Tax Court is hereby established as a court of limited jurisdiction pursuant to Article VI, Section I, paragraph 1 of the New Jersey Constitution.

b. The Tax Court shall be a court of record and shall have a seal.

Source: 2A:3A-1, 2A:3A-3

COMMENT

The language of the first paragraph is nearly identical to source section 2A:3A-1. The second sentence derives from source section 2A:3A-3. The provision in source section 2A:3A-3 concerning the jurisdiction of the Tax Court is encompassed in new 2B:13-2.

2B:13-2 Jurisdiction

a. The Tax Court shall have jurisdiction to review actions or regulations with respect to a tax matter of the following:

- (1) Any state agency or official;
- (2) A county board of taxation;
- (3) A county or municipal official.

b. The Tax Court shall have jurisdiction over actions cognizable in the Superior Court which raise issues as to which expertise in matters involving taxation is desirable, and which have been transferred to the Tax Court pursuant to the Rules of the Supreme Court.

c. The Tax Court shall have jurisdiction over any other matters as may be provided by statute.

d. The Tax Court jurisdiction shall include any powers that may be necessary to effectuate its decisions, judgments and orders.

Source: 2A:3A-4.1, 2A:3A-3, 2A:3A-22

COMMENT

Paragraph (a) replaces former provisions 2A:3A-3 and 2A:3A-4.1 with a catalog of the review jurisdiction of the Tax Court, specific instances of which are contained in Titles 54 and 54A and elsewhere in the statutes.

Paragraph (b) is new. It provides for jurisdiction in the Tax Court over actions transferred from the Superior Court which involve issues as to which the expertise of Tax Court judges is helpful.

Paragraph (c) is included to make it clear that the Legislature may provide for jurisdiction of the Tax Court in other provisions of the statutes which currently exist or which may be added in the future without amending this section.

Paragraph (d) provides for any additional jurisdiction the Tax Court may require to enforce decisions, judgments or orders. It is intended to eliminate the issue raised in Alid, Inc. v. North Bergen Township, 180 N.J. Super. 592 (App. Div. 1981), appeal dismissed as moot, 89 N.J. 388 (1982) over the power of the Tax Court to issue orders which fall under the definition of the prerogative writs. The court in Alid held that the Tax Court did not have jurisdiction to issue post-judgment orders in the nature of mandamus because the predecessor entity to the Tax Court, the Division of Tax Appeals, had no power to issue such orders. This paragraph gives the Tax Court the statutory jurisdiction to issue any orders necessary to the exercise of its subject-matter jurisdiction.

2B:13-3 Hearing and determination of cases; legal and equitable relief; practice and procedure; decisions

a. The Tax Court, in all causes within its jurisdiction, and subject to law, may grant legal and equitable relief so that all matters in controversy between the parties may be completely determined.

b. The Tax Court shall determine all issues of fact and of law de novo.

c. Practice and procedure in the Tax Court shall be as provided by the Rules of the Supreme Court.

d. Decisions of the Tax Court shall be published in the manner directed by the Supreme Court.

Source: 2A:3A-3, 2A:3A-4

COMMENT

The language of this section is virtually identical to subsections (a) and (b) of the source section. Subsection (c) of the source section is included in new 2B:13-5.

2B:13-4 Appeals

Judgments of the Tax Court may be appealed as of right to the Appellate Division of the Superior Court pursuant to the Rules of the Supreme Court.

Source: 2A:3A-4.1, 2A:3A-10

COMMENT

The language of this section is virtually identical to the corresponding provision of 2A:3A-4.1.

2B:13-5 Location for sessions; facilities

a. The Tax Court shall maintain permanent locations in Trenton and Newark and may hold sessions at other locations throughout the State.

b. The State shall provide courtrooms, chambers and offices for the Tax Court at the required permanent locations in Trenton and Newark and shall arrange for courtrooms, chambers and offices or other appropriate facilities at other locations throughout the State.

Source: 2A:3A-2

COMMENT

This section is a substantial reenactment of the source sections. The reference in the source section to "shared use of existing facilities" has been eliminated as unnecessary.

2B:13-6 Judges; number; qualifications

a. The Tax Court shall consist of no less than six, nor more than 12 judges, each of whom shall exercise the powers of the court, subject to Rules of the Supreme Court.

b. The judges of the Tax Court shall have been admitted to the practice of law in this State for at least 10 years prior to appointment and shall be chosen for their special qualifications, knowledge and experience in matters of taxation.

Source: 2A:3A-2, 2A:3A-13

COMMENT

This section is a substantial reenactment of the corresponding provisions of the source sections.

2B:13-7 Term of office, retirement

a. The judges of the Tax Court shall hold their offices for initial terms of seven years and until their successors are appointed and qualified, and upon reappointment shall hold their offices during good behavior.

b. The judges of the Tax Court shall be retired upon attaining the age of 70 years, upon the same terms and conditions as a judge of the Superior Court, and shall have the same pension rights and other benefits as judges of the Superior Court.

Source: 2A:3A-15; 2A:3A-19

COMMENT

The language of this section is virtually identical to the source sections. The phrase "and other benefits" has been added to subsection (b) to make clear that Tax Court judges are entitled to the all of the same retirement benefits as Superior Court judges. The provision for staggered terms for the initial appointees to the Tax Court has been eliminated as no longer necessary. This section parallels N.J. Const., Art. VI, °VI, par. 3.

2B:13-8 Compensation not to be reduced; prohibition against gainful employment

a. Each judge of the Tax Court shall receive annual compensation and other benefits equal to that of a judge of the Superior Court and which shall not be diminished during the term of appointment.

b. The judges of the Tax Court shall not engage in the practice of law or other gainful pursuit nor shall they hold other office or position of profit under this State, any other State or the United States.

Source: 2A:3A-18, 2A:3A-20

COMMENT

The language of these provisions is nearly identical to the source sections. The intent of this section is to subject Tax Court judges to the same rules as are applicable to Superior Court judges. The phrase "and other benefits" has been added to make clear that Tax Court judges are entitled to the same remuneration in all respects as Superior Court judges. Subsection (b) parallels N.J. Const., Art. VI, °VI, par. 7, which is applicable to judges of the Superior Court and justices of the Supreme Court, and R. 1:15(a). The provision in source section 2A:3A-20 concerning forfeiture of office of a judge who becomes a candidate for elective office has not been included here as it is covered under 2B:2-3 which covers a "judge of any court of this state."

2B:13-9 Impeachment and removal; incapacity

a. The judges of the Tax Court shall be subject to impeachment, and upon impeachment shall not exercise judicial office until acquitted. The judges of the Tax Court shall also be subject to removal from office by the Supreme Court for the causes and in the manner as is provided by law for the removal of judges of the Superior Court.

b. Whenever the Supreme Court certifies to the Governor that a judge of the Tax Court appears to be substantially unable to perform the duties of office, the Governor shall appoint a commission of three persons to inquire into the circumstances. Upon the recommendation of the Commission the Governor may retire the judge from office, on pension, as may be provided by law.

Source: 2A:3A-16, 2A:3A-17

COMMENT

This section is a substantial reenactment of the source sections. It parallels N.J. Const., Art. VI, °VI, par. 3 and 4.

2B:13-10 Presiding judge

The Chief Justice shall assign one of the judges of the Tax Court to be the presiding judge of the Tax Court. The presiding judge shall, subject to the supervision of the Chief Justice and the Administrative Director of the Courts, be responsible for the administration of the Tax Court.

Source: 2A:3A-14

COMMENT

The language of this section is substantially identical to the source section.

2B:13-11 Annual report

The presiding judge shall submit a report to the Chief Justice of the Supreme Court annually. The report shall be published as part of the Annual Report of the Administrative Director of the Courts. The report shall contain information and statistics for the previous fiscal year concerning the operation of the Tax Court. The report may also contain recommendations by the presiding judge regarding the clarification or revision of legislation, rules and regulations relating to taxation, or the practice and procedures in the Tax Court.

Source: 2A:3A-24

COMMENT

The language of this section is substantially identical to the source section.

2B:13-12 Assignment of judges to other courts

The Chief Justice may assign judges of the Tax Court to the Superior Court or to any other court as the need appears, and any judge so assigned shall exercise all of the powers of a judge of that court.

Source: 2A:3A-21

COMMENT

The source statute provided for assignment of judges of the Tax Court to the Superior Court, as well as for assignment of judges from the Superior Court to the Tax Court. The latter provision is now contained in 2B:2-2 and need not be repeated in this provision.

2B:13-13 Clerk

The Supreme Court shall appoint to serve at its pleasure a Clerk and a Deputy Clerk of the Tax Court, neither of whom shall be subject to the provisions of Title 11A, Civil Service, of the New Jersey Statutes.

Source: 2A:3A-23

COMMENT

This section is a substantial reenactment of the source section.

2B:13-14 Small Claims Division jurisdiction

The Tax Court shall have a Small Claims Division with jurisdiction in those classes of cases as may be provided by the Rules of the Supreme Court.

Source: 2A:3A-5

COMMENT

This section, like the source statute, provides for a Small Claims Division of the Tax Court. This section leaves the specification of the jurisdiction of the Small Claims Division to court rule.

2B:13-15 Conduct of hearing

The hearing in the Small Claims Division shall be informal, and the judge may receive evidence as the judge deems appropriate for a determination of the case, except that all testimony shall be given under oath. A party may appear on the party's own behalf or by an attorney or by any other person as may be provided by the Rules of the Supreme Court.

Source: 2A:3A-7

COMMENT

This section is virtually identical to the source section, except for some minor changes to eliminate superfluous language.

Title 22A [new section] Fees in the Tax Court

a. The filing fee for the commencement of a proceeding in the Tax Court, other than a proceeding in the small claims division, is \$75.00. The fee for filing a counterclaim, other than one filed by a taxing district, is \$75.00.

b. Additional fees, the reduction or waiver of fees for particular classes of cases, and the fees for the small claims division, shall be established by the Rules of the Supreme Court.

c. No proceeding shall be heard by the Tax Court unless the fees are paid.

d. All fees shall be payable to the clerk of the Tax Court for the use of the State, and shall not be refundable except as specifically provided by the Rules of the Supreme Court.

Source: 2A:3A-4.2, 2A:3A-28

COMMENT

This section combines the provisions of the source sections and eliminates superfluous language.

Table of Dispositions

2A:3A-1	2B:13-1
2A:3A-2	2B:13-5, 2B:13-6
2A:3A-3	2B:13-1, 2B:13-2, 2B:13-3
2A:3A-4	2B:13-3
2A:3A-4.1	2B:13-2, 2B:13-4
2A:3A-4.2	Title 22A - New Section
2A:3A-5	2B:13-14
2A:3A-6	Unnecessary
2A:3A-7	2B:13-15
2A:3A-8	Unnecessary. See 2B:13-2(d).
2A:3A-9	Unnecessary. See N.J. Const. Art. VI., sec. I, par. 1:
Legislative	courts and their jurisdiction "may from time to time be established, altered or abolished by law."
2A:3A-10	2B:13-4
2A:3A-11	Unnecessary. See N.J. Const. Art. VI., sec. VI., par. 1. The Governor to nominate and appoint, with the consent of the Senate, "the judges of the inferior courts with jurisdiction extending to more than one municipality."
2A:3A-12	Unnecessary; see note below.*
2A:3A-13	2B:13-6
2A:3A-14	2B:13-10
2A:3A-15	2B:13-7
2A:3A-16	2B:13-9
2A:3A-17	2B:13-9
2A:3A-18	2B:13-8
2A:3A-19	2B:13-7
2A:3A-20	2B:13-8; see also 2B:2-3, presently pending before the Legislature as S1347 and A3166
2A:3A-21	2B:13-12; see also 2B:2-2, presently pending before the Legislature as S1347 and A3166
2A:3A-22	2B:13-2
2A:3A-23	2B:13-13
2A:3A-24	2B:13-11
2A:3A-25	Transition provision, no longer necessary.
2A:3A-26	Transition provision, no longer necessary

* The source section provided for appointment of Tax Court judges in equal numbers from the two largest political parties. The Commission believes that while this provision may have been appropriate to deal with the appointment of a group of judges all at one time, as was the case when the Tax Court was established, it is no longer necessary. Elimination of this provision would make the appointment of Tax Court judges subject to the same legislative process as the appointments of Superior Court judges.

2A:3A-27

Transition provision, no longer
necessary

2A:3A-28

Title 22A - new section

2A:3A-29

Unnecessary