



## NEW JERSEY LAW REVISION COMMISSION

### Draft Tentative Report Concerning Transfer of Jurisdiction in Tax Assessment Challenges Pursuant to N.J.S. 54:3-21

January 17, 2023

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 **March 28, 2023**.

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. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

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## Project Summary

When a taxpayer or taxing district disputes the assessed valuation of a property, and the valuation exceeds one million dollars, N.J.S. 54:3-21(a) provides a choice of forum between a County Board of Taxation or the New Jersey Tax Court (“Tax Court”).<sup>1</sup> However, N.J.S. 54:3-21a(1) also directs that “[a]n appeal to the Tax Court by one party . . . shall establish jurisdiction over the entire matter in the Tax Court.”<sup>2</sup> The statute does not provide any procedure for transferring jurisdiction in the event of a “dual filing”: when one party files in the Tax Court and the opposing party files with the County Board.

In *30 Journal Square Partners, LLC v. City of Jersey City*, the Tax Court considered the “proper procedural resolution of a dual filing,” where one party timely filed with the Hudson County Board of Taxation (“County Board”) and the other timely filed with the Tax Court.<sup>3</sup> After determining that it had jurisdiction pursuant to N.J.S. 54:3-21(a), the Tax Court held that the County Board petition should be dismissed without prejudice in order to transfer jurisdiction as required in the statute.<sup>4</sup> The Tax Court found that this procedure would not encroach on either party’s independent right to challenge the property assessment.<sup>5</sup>

The proposed modifications to N.J.S. 54:3-21 are set forth in the Appendix. They articulate the procedure for transferring jurisdiction to the Tax Court if opposing parties select different forums to challenge the same qualifying property assessment, as discussed by the Tax Court in *30 Journal Square Partners*.<sup>6</sup>

## Relevant Statute

The relevant portion of N.J.S. 54:3-21 states the following:

a. (1) Except as provided in subsection b. of this section a taxpayer . . . or a taxing district . . . may . . . appeal to the county board of taxation by filing with it a petition of appeal; provided, however, that any such taxpayer or taxing district may . . . file a complaint directly with the Tax Court, if the assessed valuation of the property subject to the appeal exceeds \$1,000,000. . . . An appeal to the Tax Court by one party in a case in which the Tax Court has jurisdiction shall establish jurisdiction over the entire matter in the Tax Court. All appeals to the Tax Court hereunder shall be in accordance with the provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

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<sup>1</sup> N.J. STAT. ANN. § 54:3-21(a) (West 2022).

<sup>2</sup> N.J. STAT. ANN. § 54:3-21a(1).

<sup>3</sup> 32 N.J. Tax 91, 96 (N.J. Tax 2020).

<sup>4</sup> *30 Journal Square Partners*, 32 N.J. Tax at 102, citing *Handbook for County Boards of Taxation*, § 1105.15, p.331-32 (July 2005).

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

<sup>6</sup> Pursuant to the Commission’s request during the November 2021 meeting, Staff conducted preliminary outreach to Andrea Johnson, Legislative Liaison to the New Jersey Judiciary at the Administrative Office of the Courts. Ms. Johnson responded that the Judiciary “welcome[s] the opportunity to review any proposed language and strongly support the Commission’s efforts to address this issue.” Jan. 24, 2022, Email from Andrea Johnson, Legislative Liaison, New Jersey Judiciary (on file with NJLRC).

If a petition of appeal or a complaint is filed on April 1 or during the 19 days next preceding April 1, a taxpayer or a taxing district shall have 20 days from the date of service of the petition or complaint to file a cross-petition of appeal with a county board of taxation or a counterclaim with the Tax Court, as appropriate. . . .<sup>7</sup>

## Background

In June 2020, Jersey City (“City”) filed a timely petition challenging assessments for eleven properties owned by 30 Journal Square Partners, LLC (“Owner”) with the Hudson County Board of Taxation.<sup>8</sup> About a month later, the Owner filed a timely direct complaint challenging the same assessments in the Tax Court.<sup>9</sup>

The Tax Court determined that, pursuant to N.J.S. 54:3-21(a)(1), the Owner’s filing vested the “Tax Court . . . [with] exclusive jurisdiction over the tax appeals,” including the City’s filing with the County Board.<sup>10</sup> Although the parties did not dispute the Tax Court’s jurisdiction over the entire matter, they disagreed on the appropriate process for resolving the City’s filing in the County Board to accomplish the transfer of jurisdiction to the Tax Court.<sup>11</sup>

The City argued that the County Board must “either dismiss or affirm [the City’s] pending petitions without prejudice, thereby allowing [the City] to file a timely appeal therefrom to the Tax Court.”<sup>12</sup> The Owner contended that the County Board must dismiss the City’s filing with prejudice for lack of jurisdiction, because the Tax Court filing had “immediately divest[ed the] county board of jurisdiction.”<sup>13</sup> The Owner further asserted that, once the County Board’s jurisdiction was extinguished, the City’s only recourse was to file a timely counterclaim to the Owner’s pending direct appeal in the Tax Court.<sup>14</sup>

## Analysis

The Tax Court held that, “[i]n the absence of a clear and concise procedural mechanism to effectuate the transfer of a Board petition to the Tax Court,” the County Board’s current practice of dismissing the filing in the County Board without prejudice was the appropriate procedure.<sup>15</sup> The Tax Court considered the statute’s jurisdictional mandate and choice of forum clause, as well

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<sup>7</sup> N.J. STAT. ANN. § 54:3-21a. (emphasis added).

<sup>8</sup> *30 Journal Square Partners*, 32 N.J. Tax at 93.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 95-96, citing *Shav Assocs. v. Twp. of Middletown*, 11 N.J. Tax 569, at 576 (N.J. Tax 1991), and *Atlantic City v. Grete Bay Hotel and Casino, Inc.*, 16 N.J. Tax 486 (N.J. Tax 1997), *aff’d*, 304 N.J. Super. 457 (N.J. Super. App. Div. 1997).

<sup>11</sup> *30 Journal Square Partners*, 32 N.J. Tax at 93-95.

<sup>12</sup> *Id.* at 95.

<sup>13</sup> *Id.* at 98.

<sup>14</sup> *Id.* (“the failure to file a timely counterclaim results in the county board petitioner losing all rights and remedies associated with its original timely filing with the county board”).

<sup>15</sup> *Id.* at 102 (directing the City to request a “Memorandum of Judgment with Code #6B – Dismissal Without Prejudice – Hearing Waived” from the County Board).

as each party's right to maintain an independent cause of action to challenge property valuation assessments.<sup>16</sup>

As an initial matter, the *30 Journal Square Partners* Court found it “undisputed that a county board’s jurisdiction is extinguished because of a legitimate and timely direct appeal to the Tax Court” under N.J.S. 54:3-21(a)(1).<sup>17</sup> After resolving the jurisdictional question, the Court discussed the appropriate procedural mechanism for transferring jurisdiction over a County Board petition to the Tax Court.<sup>18</sup>

The Tax Court adopted the reasoning in *Twp. of South Brunswick v. Princeton Orchards Assocs. L.L.C.*, an unpublished opinion, which addressed the same issue.<sup>19</sup> The *South Brunswick* Court explained that the first sentence of N.J.S. 54:3-21(a)(1) “clearly and unequivocally accords both the taxpayer and the taxing district an independent right to appeal from a property tax assessment.”<sup>20</sup> The *South Brunswick* Court found that “the right of each party to pursue an appeal within the statutory time period is wholly independent of and unaffected by the course of action decided upon by the other,” and therefore, “the choice of forum . . . should not affect the substantial rights of the parties.”<sup>21</sup>

In order to preserve each party’s right of appeal, while also respecting the statutory grant of jurisdiction, the *South Brunswick* Court concluded that a filing in the Tax Court “does not retroactively nullify a timely filed cause of action in the county board to preclude its litigation in another forum.”<sup>22</sup>

With respect to the practice of dismissing (or affirming) the petition without prejudice, the *South Brunswick* Court noted that such resolutions are “generally deemed as [judgments] entered

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<sup>16</sup> *Id.* at 98 (disagreeing with the Owner’s position “that the party with a county board petition is limited to the filing of a timely counterclaim to protect its independent right of appeal”).

<sup>17</sup> *Id.*, citing *Shav Assocs. v. Twp. of Middletown*, 11 N.J. Tax 569 (Tax 1991) (holding that “[i]f there is a timely and proper filing of a complaint in the Tax Court, the county board of taxation has no jurisdiction over the matter.”), and *Greate Bay Hotel and Casino, Inc.*, 16 N.J. Tax 486, 494-95 (Tax) (“When an assessment exceeds \$750,000, there is not equal and concurrent jurisdiction in the county board and in the Tax Court. There is jurisdiction available to either the taxpayer or the taxing district in the Tax Court . . . .”), *aff’d*, 304 N.J. Super. 457 (App. Div. 1997).

<sup>18</sup> *30 Journal Square Partners*, 32 N.J. at 98. Although the *Greate Bay* Court resolved the dual filing by “order[ing] the taxpayer to withdraw its complaints at the county board,” the *30 Journal Square Partners* Court rejected this procedure for accomplishing the transfer of jurisdiction. *Id.* at 97-98 (noting the *Greate Bay* Court’s findings that the parties were engaging in gamesmanship and that the County Board was “ill-equipped” to handle the large assessment, and determining that “gamesmanship [by either party is] irrelevant to the procedural issues at hand.”). Rather, the *30 Journal Square Partners* Court described the issue as “strictly a determination of what the appropriate resolution of a pending county board appeal is when the county board no longer has jurisdiction due to another party’s filing of a direct appeal with the Tax Court.” *Id.* at 98.

<sup>19</sup> *Id.* at 99 (“the court adopts the approach thoughtfully described by my colleague Judge Sundar in *Twp. of South Brunswick v. Princeton Orchards Assocs. L.L.C.*, 2013 WL 1787160, 2013 N.J. Tax Unpub. LEXIS 23 (Tax 2013), which this court now incorporates herein and adopts as its own . . .”).

<sup>20</sup> *Id.*, quoting *F.M.C. Stores Co. v. Boro. of Morris Plains*, 195 N.J. Super. 373, 380 (App. Div. 1984), *aff’d sub nom. F.M.C. Stores Co. v. Borough of Morris Plains.*, 100 N.J. 418 (1985).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

without an adjudication of the merits of the case.”<sup>23</sup> The “procedural mechanism . . . if a direct appeal is filed . . . is to have the county board issue a judgment under N.J.S.A. 54:3-26 dismissing the petition without prejudice due to the existence of the direct appeal.”<sup>24</sup> The Court explained that this procedure allowed the County Board party to file “a timely appeal from that judgment to the Tax Court,” and also “recognize[d] the county board’s inability to retain continuing jurisdiction.”<sup>25</sup>

The *30 Journal Square Partners* Court applied this reasoning to the facts therein and directed the City to request a “Memorandum of Judgment with Code #6B – Dismissal Without Prejudice – Hearing Waived” from the County Board, as permitted by the New Jersey Handbook for County Boards of Taxation.<sup>26</sup>

Finally, noting that N.J.S. 54:3-21 does “not provide guidance on how [the transfer of jurisdiction required by the statute] should be accomplished,” the Court opined that

the Legislature should clarify that the filing of a direct appeal in the Tax Court does not vitiate the county board’s jurisdiction to dismiss the pending petitions without prejudice, and provide the procedural mechanisms to be followed by the parties and the county boards of taxation. This would then preserve the petitioner’s ability to continue the litigation in the Tax Court.<sup>27</sup>

### **Legislative History of N.J.S. 54:3-21**

The predecessor statute to N.J.S. 54:3-21 was enacted in 1918,<sup>28</sup> and was amended to its current form in 1945.<sup>29</sup> Following the creation of the New Jersey Tax Court in 1978,<sup>30</sup> the choice of forum clause was added to N.J.S. 54:3-21 in 1979.<sup>31</sup>

The establishment of the New Jersey Tax Court, and the procedural statutes enacted relative to it, were the result of research, data collection, and public hearings conducted by the Senate Special Committee on Tax Appeals Procedure (Tax Committee).<sup>32</sup> The reports and hearings were prompted in large part by the tremendous backlog in the Division of Tax Appeals.<sup>33</sup> The Tax Committee issued its report in 1977, and acknowledged that “[o]ne of the most consistent

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<sup>23</sup> *Id.* at 100, citing *Greate Bay Hotel & Casino v. City of Atl. City*, 21 N.J. Tax 122, 124 (Super. Ct. App. Div. 2003) (describing a dismissal without prejudice as “tantamount to a transfer of the appeal to the Tax Court”).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 102; see *New Jersey Handbook for County Boards of Taxation*, § 1105.15, p.331-32 (July 2005).

<sup>27</sup> *Id.*

<sup>28</sup> P.L. 1918, c.236, §§ 701-704, eff. Mar. 4, 1918.

<sup>29</sup> P.L. 1945, c. 125, eff. Apr. 9, 1945.

<sup>30</sup> N.J.S.A. 2b:13-1 (West 2022) (L.1993, c. 74, § 1, eff. March 12, 1993, repealing L.1978, c. 33, codified as N.J.S. 2A:3A-1).

<sup>31</sup> N.J.S.A. 54:3-21 (West 2022) (L.1979, c. 113, § 1, eff. July 1, 1979).

<sup>32</sup> Report of the Special Comm. on Tax Appeal Procedures of the Senate of New Jersey, *Tax Appeals in New Jersey: A Critique and a Program for Legis. Action*, 129<sup>th</sup> S., 2<sup>nd</sup> Sess., at 3-4 (June 26, 1977).

<sup>33</sup> Report of the Special Comm. on Tax Appeal Procedures, at 7 (concluding “that the State tax appeals procedure has reached a crisis of such proportions that it can be rectified only through a fundamental restructuring . . .”).

criticisms of the tax appeals procedure in the State . . . was that the county boards of taxation did not possess the time or the facilities to objectively review and adjudicate the tax appeals brought before them.”<sup>34</sup>

In 1999, the Legislature amended N.J.S. 54:3-21 to add language granting exclusive jurisdiction to the Tax Court if one of the parties filed an appeal therein.<sup>35</sup> The amendment was among a “series of recommendations made by the Supreme Court Committee on the Tax Court,” that were described as “primarily procedural in nature and . . . designed to increase uniformity, efficiency and flexibility in key areas of the administration of property tax appeals.”<sup>36</sup>

However, the Legislature did not provide any procedural mechanism for transferring a petition in the County Board to the New Jersey Tax Court when the Tax Court’s exclusive jurisdiction is triggered pursuant to N.J.S. 54:3-21.<sup>37</sup>

### **Dismissal Without Prejudice**

- *New Jersey Handbook for County Boards of Taxation*

The New Jersey Handbook for County Boards of Taxation (“Handbook”) “provides a comprehensive reference for county tax administration.”<sup>38</sup> The Handbook describes the purpose and effect of “Dismissals without Prejudice” at § 1105.15.<sup>39</sup> That section indicates that the dismissal without prejudice adjudication should be employed if “[t]he property under appeal has an appeal pending before the tax court, or a higher court, for one or more prior years,” or when “both sides feel that the matter would be better heard by the tax court and desire the matter to go there.”<sup>40</sup>

The Handbook also explains that “[t]he effect of a dismissal without prejudice [is] that the matter proceeds to the tax court without the presumption of correctness, which usually attaches to

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<sup>34</sup> Report of the Special Comm. on Tax Appeal Procedures of the Senate of New Jersey, *Tax Appeals in New Jersey: A Critique and a Program for Legis. Action*, at 72-73; see also Sidney Glaser, *New Jersey’s Tax Court*, Proceedings of the Annual Conference on Taxation Held under the Auspices of the National Tax Association, Tax Institute of America, Vol. 72, at 80 (1979) (“it is believed that the [choice of forum] legislation will save time in disposing of large property tax appeals.”).

<sup>35</sup> L.1999, c. 208, § 2, eff. Sept. 17, 1999.

<sup>36</sup> Office of the Governor News Release, at \*2 (Sept. 17, 1999).

<sup>37</sup> See *30 Journal Square Partners*, 32 N.J. Tax at 102 (“The court notes that while N.J.S.A. 54:3-21(a) explicitly vests exclusive jurisdiction of all pending county board petitions with the Tax Court upon the filing of a direct appeal, it does not provide guidance on how this should be accomplished. Unfortunately, there are no statutory procedural guidelines or edicts as to how this is to occur.”).

<sup>38</sup> *New Jersey Handbook for County Boards of Taxation* (July 2005) (“[t]he Handbook . . . represents the cooperative efforts of the Division of Taxation and the New Jersey Association of County Tax Boards”).

<sup>39</sup> *Handbook*, § 1105.15, p.331.

<sup>40</sup> *Handbook*, § 1105.15, p.331-32.

the judgments of the county board.”<sup>41</sup> In addition, Section 1105.15 cites to an October 16, 1987 DAG Letter (“1987 DAG Letter”) addressed to “Tax Appeal Procedures,” as a reference.<sup>42</sup>

The 1987 DAG Letter was concerned with procedures used by County Boards in two areas, including “the dismissal of appeals without prejudice.”<sup>43</sup> It was noted in the letter that “County Boards are specifically authorized to dismiss appeals without prejudice pursuant to N.J.S.A. 54:51A-1c.”<sup>44</sup> The 1987 DAG Letter goes on to say that “[a] dismissal without prejudice simply results in an affirmance of the challenged assessment without prejudicing the right of either party to file a further complaint with the Tax Court.”<sup>45</sup>

Encouraging County Boards to exercise discretion “in a manner that is consistent with the efficient and proper handling of tax appeals,” the 1987 DAG Letter concludes that “[t]he dismissal without prejudice procedure allows for an appeal to be expeditiously routed through the County Board . . . .”<sup>46</sup>

- *Town of Kearny v. PSE&G Servs. Corp.*<sup>47</sup>

The Tax Court has addressed the issue of dual filings in *Town of Kearny v. PSE&G Servs. Corp.*, since the decision in *30 Journal Square Partners*.<sup>48</sup> In *Town of Kearny*, the tax assessment dispute between the Municipality and PSE&G addressed dozens of properties over several tax years, which were eventually consolidated into an appeal in the Tax Court.<sup>49</sup>

With respect to some of the properties, the Municipality filed its challenges with the County Board and PSE&G filed with the Tax Court.<sup>50</sup> Whenever dual filings occurred, the County Board “issued Memorandums of Judgment . . . affirming the original assessments, utilizing Code 6B,

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<sup>41</sup> *Handbook*, § 1105.15, p.332.

<sup>42</sup> *Handbook*, § 1105.15, p.332 and Appendix, p.116.

<sup>43</sup> *Handbook*, Appendix, p.116 (“[t]he [other] area concerns the method for accepting stipulations as to value submitted to a County Board”).

<sup>44</sup> *Handbook*, Appendix, p.116. *See also* N.J. STAT. ANN. § 54:51A-1c. (West 2022) (“If the Tax Court shall determine that the appeal to the county board of taxation has been (1) withdrawn . . . ; (2) dismissed because of appellant's failure to prosecute the appeal at a hearing called by the county tax board; (3) settled by mutual consent . . . , there shall be no review. This provision shall not preclude a review by the Tax Court in the event that the appeal was “dismissed without prejudice” by the county board of taxation.”) (emphasis added).

<sup>45</sup> *Handbook*, Appendix, p.116 (emphasis added). *See also 30 Journal Square Partners*, 32 N.J. Tax at 102 (concluding that a dismissal without prejudice “provides the Tax Court with jurisdiction over the entire matter as required by N.J.S.A. 54:3-21(a)” and gives the City “the opportunity to continue to challenge the assessments at issue by filing a timely appeal to the Tax Court in compliance” with N.J.S. 54:3-21).

<sup>46</sup> *Handbook*, Appendix, p.116.

<sup>47</sup> No. 011505-2014, 2022 WL 569152 (N.J. Tax Ct. Feb. 24, 2022).

<sup>48</sup> *Id.* at \*15.

<sup>49</sup> *Id.* at \*2-3 (describing the procedural history as “complicated, to say the least,” and detailing that the relevant tax assessment appeals dated back to 2013 and challenged assessments on between five and thirty-three properties each tax year).

<sup>50</sup> *Id.* at \*3-4.

Dismissal without Prejudice – Hearing Waived,”<sup>51</sup> and the Municipality appealed to the Tax Court.<sup>52</sup>

In the consolidated appeal, PSE&G challenged the Tax Court’s jurisdiction to review these County Board judgments, “argu[ing] that ‘where duplicate appeals are filed in the Tax Court and the County Board of Taxation on the same property, the appeal initiated in the County Tax Board – which had no jurisdiction to act – should be dismissed.’”<sup>53</sup> Noting that “[t]he factual scenario presented [was] not meaningfully distinguishable” from *30 Journal Square Partners*, the Tax Court described its “analysis and conclusion in the present matter [as] an extension of this court’s earlier decision.”<sup>54</sup>

Therefore, the Tax Court held that “it maintains exclusive jurisdiction over the Municipality’s Complaints, which appealed the county board judgments,” finding that “N.J.S.A. 54:3-21(a) does not negate a County Board’s ability to issue judgments dismissing the pending petitions without prejudice.”<sup>55</sup>

- *Branchburg Hosp. LLC v. Twp. of Branchburg*<sup>56</sup>

In *Branchburg Hosp. LLC v. Twp. of Branchburg*, the Plaintiff initially filed his tax assessment challenge in the Tax Court, withdrew the complaint, and then challenged the same assessment by filing a petition of appeal with the Somerset County Board of Taxation.<sup>57</sup> The Defendant argued that, because the Plaintiff “first filed its direct appeal challenging the assessment in the Tax Court, the County Board was thus deprived of jurisdiction to render the judgment which [P]laintiff now appeals in this matter.”<sup>58</sup>

In addressing this argument, the *Branchburg* Court examined the way in which prior case law in New Jersey has treated different factual scenarios implicating the exclusive jurisdiction

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<sup>51</sup> *Id.* at \*3.

<sup>52</sup> *Id.* at \*4 (“Like earlier years, the County Board affirmed the original assessments, and the Municipality appealed the county board judgments to the Tax Court.”).

<sup>53</sup> *Id.* at \*15.

<sup>54</sup> *Id.* at \*16.

<sup>55</sup> *Id.* at \*17.

<sup>56</sup> 32 N.J. Tax 546 (2022).

<sup>57</sup> *Id.* at 550. Plaintiff filed a complaint in the Tax Court challenging the 2021 tax assessment of a piece of property, and soon after the Defendant filed a counterclaim, answer and motion to dismiss, Plaintiff withdrew the complaint and Defendant withdrew the counterclaim. *Id.* Plaintiff then filed a petition of appeal with the Somerset County Board of Taxation challenging the same assessment, and Defendant filed a motion to dismiss for lack of jurisdiction among other things. *Id.* The County Board held that it had subject matter jurisdiction over the petition, but dismissed it on other grounds. *Id.* Plaintiff again filed a complaint in the Tax Court, challenging the County Board’s dismissal, and Defendant filed an answer, counterclaim and a motion to dismiss for lack of subject matter jurisdiction. *Id.* at 551.

<sup>58</sup> *Id.* at 553.



clause in N.J.S. 54:3-21, finding the “matter before [it] distinguishable from those upon which the courts have previously opined.”<sup>59</sup>

In *Union City Assocs. v. City of Union City*,<sup>60</sup> the Supreme Court addressed simultaneous filings in the Tax Court and the County Board by *one* party.<sup>61</sup> The Plaintiff-Taxpayer “filed petitions for appeal for the same tax year in both the Tax Court and at the county board of taxation.”<sup>62</sup> The *Union City* Court held that the Tax Court had jurisdiction because “the Legislature intended to bind the taxpayer by his election [and not allow the taxpayer to] maintain identical appeals in both forums” with the exclusive jurisdiction clause in N.J.S. 54:3-21.<sup>63</sup>

In *Greate Bay Hotel & Casino v. City of Atl. City*, the Tax Court described the appropriate resolution in two alternative factual scenarios:<sup>64</sup> (1) “if the taxpayer files an appeal in the Tax Court and the municipality challenges the same assessment in the county board, it is the Tax Court that has exclusive jurisdiction;”<sup>65</sup> and (2) “[i]f the converse is true and the taxpayer files with the county board and the municipality with the Tax Court, then . . . it is still the Tax Court that has sole jurisdiction.”<sup>66</sup>

The Tax Court distinguished the facts in *Branchburg* from previous decisions on the basis that “no simultaneous filings are involved.”<sup>67</sup> Although the Plaintiff filed in both the Tax Court and the County Board, the filings were “serial appeals,” because the Tax Court filing (including the counterclaim filed by the Defendant) was withdrawn before the County Board filing.<sup>68</sup>

Therefore, the *Branchburg* Court held that, “[s]ince no appeal was then pending in the Tax Court, the statutory requirement that the County Board be deprived of jurisdiction did not apply.”<sup>69</sup>

### Relevant Statistics<sup>70</sup>

Both the New Jersey Division of Taxation (“Division”) and the Tax Court compile statistics

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<sup>59</sup> *Id.* at 555.

<sup>60</sup> 115 N.J. 17 (1989).

<sup>61</sup> *Branchburg*, 32 N.J. Tax at 553.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*, quoting *Union City*, 115 N.J. at 18.

<sup>64</sup> *Branchburg*, 32 N.J. Tax at 554.

<sup>65</sup> *Id.*, quoting *Greate Bay Hotel & Casino, Inc.*, 21 N.J. Tax at 127 (citing *Shav Assocs. v. Middletown Tp.*, 11 N.J. Tax 569 (Tax Ct. 1991)).

<sup>66</sup> *Id.*, quoting *Greate Bay Hotel & Casino, Inc.*, 21 N.J. Tax at 127-28 (citing *Atl. City v. Greate Bay Hotel & Casino, Inc.*, 16 N.J. Tax 486, *aff'd sub nom. City of Atl. City v. Greate Bay Hotel & Casino, Inc.*, 304 N.J. Super. 457 (App. Div. 1997)).

<sup>67</sup> *Branchburg*, 32 N.J. at 555.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> See N.J. Law Revision Comm’n, *Minutes NJLRC Meeting*, at \*7, Mar. 17, 2022, www.njlrc.org (last visited Jan. 11, 2023) (“Commissioner Bertone noted that it is unusual for a municipality to appeal in the first instance. She asked Staff to research how many times such instances occur.”).

related to the number and types of local property tax appeals that move through the County Boards of Taxation and the Tax Court.<sup>71</sup> The Division provided a chart on its website that sets forth the total number of property tax appeals in each county broken down into different categories, such as filing fee amount, dispositions, total assessment valuation, and classification.<sup>72</sup> According to the Division, there were over 24,000 property tax appeals filed with County Boards in New Jersey in 2021.<sup>73</sup> Almost 6,000 of those appeals were dismissed without prejudice, and about 2,400 challenged valuations over one million dollars.<sup>74</sup>

In addition, the New Jersey Tax Court issues an annual report each year, which provides various statistics related to the types and dispositions of cases filed in the Tax Court each year.<sup>75</sup> In its 2021 Annual Report, the Tax Court indicated that there were almost 14,500 new local property tax cases filed.<sup>76</sup> Although the Annual Report did not provide a further breakdown of these appeals, additional information may be obtained from the Tax Court website, which posts published and unpublished Tax Court decisions for each year going back to 2017.

In 2022, for example, the Tax Court issued five published decisions and seventeen unpublished decisions dealing with local property tax assessment challenges.<sup>77</sup> In six cases, one party had appealed a County Board decision to the Tax Court, and in fourteen cases, the challenged property had an assessment of at least a million dollars and the challenge was filed directly in the Tax Court. Just two of these cases involved a dual filing issue.<sup>78</sup>

Finally, the Tax Court provides a docket summary of each local property tax case filed during the calendar year which provides limited information including the case name, assessment

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<sup>71</sup> See Email from Kevin Boyle, Counsel to Property Administration, Division of Taxation, Department of the Treasury, to Whitney G. Schlimbach, Counsel, NJLRC (Jul. 26, 2022, 12:43 PM EST) (providing links to relevant statistics) (on file with NJLRC).

<sup>72</sup> Tax Appeal Statistics 2021, Property Tax Appeals, New Jersey Division of Taxation, last updated 01/06/23, available at < <https://nj.gov/treasury/taxation/pdf/lpt/appeals2021.pdf> > (last visited Jan. 11, 2023).

<sup>73</sup> Summary of County Tax Board Appeals Report Pursuant to c.499 P.L. 1979 (N.J.S.A. 54:3-5.1), Column (2) (“Total Number of Appeals”), New Jersey Division of Taxation, available at < <https://nj.gov/treasury/taxation/pdf/lpt/appeals2021.pdf> > (last visited Jan. 11, 2023).

<sup>74</sup> Summary of County Tax Board Appeals Report Pursuant to c.499 P.L. 1979 (N.J.S.A. 54:3-5.1), Column (1) (“Dispositions”) & Column (4) (“Filing Fees”), New Jersey Division of Taxation, available at < <https://nj.gov/treasury/taxation/pdf/lpt/appeals2021.pdf> > (last visited Jan. 11, 2023).

<sup>75</sup> Annual Report of the Presiding Judge of the Tax Court of New Jersey, July 1, 2020 – June 30, 2021, Tax Court of New Jersey, available at < <https://www.njcourts.gov/sites/default/files/tca2021.pdf> > (last visited Jan. 11, 2023).

<sup>76</sup> *Id.* at Table 7.

<sup>77</sup> Published Tax Court Opinions, Jan. 1, 2022 to Dec. 31, 2022, available at < <https://www.njcourts.gov/attorneys/opinions/published-tax?start=2022-01-01&end=2022-12-31> > (last visited Jan. 11, 2023); Unpublished Tax Court Opinions, Jan. 1, 2022 to Dec. 31, 2022, available at < [https://www.njcourts.gov/attorneys/opinions/unpublished-tax?field\\_posted\\_date\\_value=2022-01-01&field\\_posted\\_date\\_value\\_1=2022-12-31](https://www.njcourts.gov/attorneys/opinions/unpublished-tax?field_posted_date_value=2022-01-01&field_posted_date_value_1=2022-12-31) > (last visited Jan. 11, 2023).

<sup>78</sup> Only one case – *Township of Kearny*, see *supra* note 37 – dealt with a dual filing by opposing parties, and one case – *Branchburg*, see *supra* note 46 – dealt with a dual filing by one party. With respect to the two remaining cases: one case was transferred from the Law Division to the Tax Court and the other case was in the small claims division of the Tax Court.

amount, and disposition.<sup>79</sup> In January 2022, there were 1,979 filings in the Tax Court.<sup>80</sup> Of those filings, only 68 were filed by a municipality and most often, the filings addressed property assessed at less than one million dollars and were resolved by settlement or the withdrawal of the complaint.<sup>81</sup>

### **Pending Bills**

Currently, there is one bill pending in the New Jersey Legislature that concerns N.J.S. 54:3-21, but it does not address the procedural issue raised in *30 Journal Square Partners*.<sup>82</sup>

### **Conclusion**

The proposed modifications to N.J.S. 54:3-21 articulate the procedure for transferring jurisdiction to the Tax Court if opposing parties simultaneously select different forums to challenge the same qualifying property assessment, as discussed by the Tax Court in *30 Journal Square Partners v. City of Jersey City*.<sup>83</sup>

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<sup>79</sup> All Docketed Tax Court Cases, available at < [https://archive.njcourts.gov/courts/tax/docketed\\_lists.html](https://archive.njcourts.gov/courts/tax/docketed_lists.html)> (last visited Jan. 11, 2023).

<sup>80</sup> All Docketed Tax Court Cases, January 2022 Excel Spreadsheet, available at < [https://archive.njcourts.gov/courts/tax/docketed\\_lists.html](https://archive.njcourts.gov/courts/tax/docketed_lists.html)> (last visited Jan. 11, 2023).

<sup>81</sup> *Id.*

<sup>82</sup> Senate Bill 823, 2022 Leg., 220<sup>th</sup> Sess. (Jan. 18, 2022); *see also* Sponsors Statement to S.B. 823 (“This bill would prohibit property taxpayers from filing property tax appeals with respect to the property of others.”).

<sup>83</sup> Pursuant to the Commission’s request during the November 2021 meeting, Staff conducted preliminary outreach to Andrea Johnson, Legislative Liaison to the New Jersey Judiciary at the Administrative Office of the Courts. Ms. Johnson responded that the Judiciary “welcome[s] the opportunity to review any proposed language and strongly support the Commission’s efforts to address this issue.” Jan. 24, 2022, Email from Andrea Johnson, Legislative Liaison, New Jersey Judiciary (on file with NJLRC).

## Appendix

There are two drafting options shown below. One is contained in this Appendix and the second is contained in the Alternative Appendix, which begins on page 16.

The proposed modifications to **N.J.S. 54:3-21** (shown with ~~strikethrough~~, and underlining), follow:

a. ~~(1)~~ Except as provided in subsection b. of this section:

(1) a taxpayer feeling aggrieved by the assessed valuation or exempt status of the taxpayer's property or a taxing district which may feel discriminated against by the assessed valuation or exempt status of property in the taxing district, or by the assessed valuation or exempt status of property in another taxing district in the county,

(A) may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, appeal to the county board of taxation by filing with it a petition of appeal; ~~or provided, however, that any such taxpayer or taxing district may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later,~~ file a complaint directly with the Tax Court, if the assessed valuation of the property subject to the appeal exceeds \$1,000,000.;

(B) ~~In~~ in a taxing district where a municipal-wide revaluation or municipal-wide reassessment has been implemented, ~~a taxpayer or a taxing district~~ may appeal before or on May 1 to the county board of taxation by filing with it a petition of appeal or, if the assessed valuation of the property subject to the appeal exceeds \$1,000,000, by filing a complaint directly with the State Tax Court; ~~Within ten days of the completion of the bulk mailing of notification of assessment, the assessor 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. If a county board of taxation completes the bulk mailing of notification of assessment, the tax administrator of the county board of taxation shall within ten days of the completion of the bulk mailing prepare and keep on file a certification setting forth the date on which the bulk mailing was completed. A taxpayer shall have 45 days to file an appeal upon the issuance of a notification of a change in assessment. An appeal to the Tax Court by one party in a case in which the Tax Court has jurisdiction shall establish jurisdiction over the entire matter in the Tax Court. All~~

~~appeals to the Tax Court hereunder shall be in accordance with the provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.<sup>84</sup>~~

~~If a petition of appeal or a complaint is filed on April 1 or during the 19 days next preceding April 1, a taxpayer or a taxing district shall have 20 days from the date of service of the petition or complaint to file a cross petition of appeal with a county board of taxation or a counterclaim with the Tax Court, as appropriate.<sup>85</sup>~~

~~(2) With (C) with respect to property located in a county participating in the demonstration program established in section 4 of P.L.2013, c.15 (C.54:1-104), a property located in a county operating under the "Property Tax Assessment Reform Act," P.L.2009, c.118 (C.54:1-86 et seq.), or a property located in a county that has adopted, by resolution, the provisions of section 1 of P.L.2018, c.94 (C.54:1-105), and except as provided in subsection b. of this section, a taxpayer ~~feeling aggrieved by the assessed valuation or exempt status of the taxpayer's property or a taxing district which may feel discriminated against by the assessed valuation or exempt status of property in the taxing district, or by the assessed valuation or exempt status of property in another taxing district in the county,~~ may~~

~~(i) on or before January 15, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever date is later, appeal to the county board of taxation by filing with it a petition of appeal; or,~~

~~(ii) provided, however, that any such taxpayer, or taxing district, may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever date is later, file a complaint directly with the Tax Court, if the assessed valuation of the property subject to the appeal exceeds \$1,000,000.~~

~~(2) If a petition of appeal is filed on January 15 or during the 19 days next preceding January 15, or a petition of appeal or a complaint is filed with the Tax Court on April 1 or during the 19 days next preceding April 1, a taxpayer or a taxing district shall have 20 days from the date of service of the petition or complaint to file a cross-petition of appeal with a county board of taxation or a counterclaim with the Tax Court, as appropriate.~~

~~(3) Within 10 days of the completion of the bulk mailing of notification of assessment, the assessor of the taxing district shall file with the county board of taxation a~~

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<sup>84</sup> The stricken language in this subsection has been shifted to newly created subsections(a) (3) and (a)(4) below.

<sup>85</sup> The stricken language in this paragraph has been shifted to a newly created subsections(a) (2) below.

certification setting forth the date on which the bulk mailing was completed. If a county board of taxation completes the bulk mailing of notification of assessment, the tax administrator of the county board of taxation shall within 10 days of the completion of the bulk mailing prepare and keep on file a certification setting forth the date on which the bulk mailing was completed.

(4) A taxpayer shall have 45 days to file an appeal upon the issuance of a notification of a change in assessment.

(5) An appeal to the Tax Court by one party in a case in which the Tax Court has jurisdiction shall establish jurisdiction over the entire matter in the Tax Court. In the event that one party files a petition of appeal with the county board of taxation and one party files a complaint directly with the Tax Court challenging the same local property tax assessment, the county board of taxation shall issue a [Memorandum of Judgment with Code #6B – Dismissal Without Prejudice – Hearing Waived] judgment under N.J.S.A. 54:3-26 dismissing the petition without prejudice to permit an appeal from that judgment to the Tax Court. All appeals to the Tax Court hereunder shall be in accordance with the provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

b. No taxpayer or taxing district shall be entitled to appeal either an assessment or an exemption or both that is based on a financial agreement subject to the provisions of the "Long Term Tax Exemption Law" under the appeals process set forth in subsection a. of this section.

c. In the case of a municipality located in a county wherein the county board of taxation is participating in the demonstration program established in section 4 of the "Real Property Assessment Demonstration Program," P.L.2013, c.15 (C.54:1-104), absent good cause, a property owner shall not be entitled to appeal an assessment on a parcel of real property if the assessor's or the county board of taxation's request to internally inspect the property, made after the appeal is filed, has been refused by the property owner.

#### COMMENT

##### *Subsection (a)*

In the original statute, subsection a. is divided into two subsections, each containing practically identical language (1) related to the timing of the "bulk mailing of notification of assessment;" (2) addressing appeals to the Tax Court; and (3) setting forth a twenty-day time limit for filing counter-petitions and counterclaims, depending on the date the initial petition or complaint was filed. The proposed modifications divide the statute into lettered and numbered subsections to increase accessibility and eliminate repetitive language.

##### *Subsection (a)(1)*

The language in subsection (a)(1) addresses the dates by which a taxpayer or taxing district challenging different types of property must file a petition of appeal with a county board or a complaint in the Tax Court.

The proposed modifications eliminate repetitive language and divide the statute into numbered and lettered subsections to improve readability and accessibility, consistent with modern drafting practices, but do not alter the substance of subsection (a)(1).

*Subsection (a)(2)*

Subsection (a)(2) sets forth a twenty-day time period for filing a cross-petition of appeal or a counterclaim, depending on when the initial petition of appeal or complaint was filed.

The proposed modifications add language indicating that the twenty-day time period applies to complaints *and* petitions of appeal filed “on April 1 or during the 19 days next preceding April 1.” This language, which appeared earlier in the original statute, was consolidated with similar other language in order to eliminate repetitive language and improve the readability of the statute.

The proposed modifications do not alter the substance of subsection (a)(2).

*Subsection (a)(3)*

In subsection (a)(3), the requirements for filing a certification of the “bulk mailing of notification assessment[s]” are set forth.

No modifications are proposed with respect to this subsection.

*Subsection (a)(4)*

Subsection (a)(4) addresses the time within which a taxpayer may file an appeal of a change in assessment.

*Subsection (a)(5)*

The language granting the Tax Court exclusive jurisdiction if one party files an appeal therein and the requirement that all appeals to the Tax Court comply with the State Uniform Tax Procedure Law are now contained in subsection (a)(5).

The proposed modifications add language to subsection (a)(5) articulating the appropriate procedure for effectuating a transfer of jurisdiction to the Tax Court when there has been a dual filing by opposing parties challenging the same property tax assessment. The proposed language is derived from the Tax Court’s opinion in *30 Journal Square Partners*.

Staff seeks guidance from the Commission regarding whether the proposed language describing the appropriate procedural mechanism should include the specific judgment code (“Memorandum of Judgment with Code #6B – Dismissal Without Prejudice – Hearing Waived”), cited by the Tax Court.<sup>86</sup>

*Subsections b. – c.*

There are no proposed modifications with respect to subsections b. and c.

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<sup>86</sup> *30 Journal Square Partners*, 32 N.J. Tax at 102.

### **Alternative Appendix (with fewer eliminations and subsections)**

a. (1) Except as provided in subsection b. of this section a taxpayer feeling aggrieved by the assessed valuation or exempt status of the taxpayer's property or a taxing district which may feel discriminated against by the assessed valuation or exempt status of property in the taxing district, or by the assessed valuation or exempt status of property in another taxing district in the county,

(A) may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, appeal to the county board of taxation by filing with it a petition of appeal; or provided, however, that any such taxpayer or taxing district may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, file a complaint directly with the Tax Court, if the assessed valuation of the property subject to the appeal exceeds \$1,000,000.

(B) ~~In~~ in a taxing district where a municipal-wide revaluation or municipal-wide reassessment has been implemented, a taxpayer or a taxing district may appeal before or on May 1 to the county board of taxation by filing with it a petition of appeal or, if the assessed valuation of the property subject to the appeal exceeds \$1,000,000, by filing a complaint directly with the State Tax Court.

Within ten days of the completion of the bulk mailing of notification of assessment, the assessor 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. If a county board of taxation completes the bulk mailing of notification of assessment, the tax administrator of the county board of taxation shall within ten days of the completion of the bulk mailing prepare and keep on file a certification setting forth the date on which the bulk mailing was completed. A taxpayer shall have 45 days to file an appeal upon the issuance of a notification of a change in assessment. An appeal to the Tax Court by one party in a case in which the Tax Court has jurisdiction shall establish jurisdiction over the entire matter in the Tax Court. In the event that one party files a petition of appeal with the county board of taxation and one party files a complaint directly with the Tax Court challenging the same local property tax assessment, the county board of taxation shall issue a [Memorandum of Judgment with Code #6B – Dismissal Without Prejudice – Hearing Waived] judgment under N.J.S.A. 54:3-26 dismissing the petition without prejudice to permit an appeal from that judgment to the Tax Court. All appeals to the Tax Court hereunder shall be in accordance with the provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.



If a petition of appeal or a complaint is filed on April 1 or during the 19 days next preceding April 1, a taxpayer or a taxing district shall have 20 days from the date of service of the petition or complaint to file a cross-petition of appeal with a county board of taxation or a counterclaim with the Tax Court, as appropriate.

(2) With respect to property located in a county participating in the demonstration program established in section 4 of P.L.2013, c.15 (C.54:1-104), a property located in a county operating under the "Property Tax Assessment Reform Act," P.L.2009, c.118 (C.54:1-86 et seq.), or a property located in a county that has adopted, by resolution, the provisions of section 1 of P.L.2018, c.94 (C.54:1-105), and except as provided in subsection b. of this section, a taxpayer feeling aggrieved by the assessed valuation or exempt status of the taxpayer's property or a taxing district which may feel discriminated against by the assessed valuation or exempt status of property in the taxing district, or by the assessed valuation or exempt status of property in another taxing district in the county,

(A) may on or before January 15, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever date is later, appeal to the county board of taxation by filing with it a petition of appeal; ~~or, provided, however, that any such taxpayer, or taxing district,~~

(B) may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever date is later, file a complaint directly with the Tax Court, if the assessed valuation of the property subject to the appeal exceeds \$1,000,000.

If a petition of appeal is filed on January 15 or during the 19 days next preceding January 15, or a complaint is filed with the Tax Court on April 1 or during the 19 days next preceding April 1, a taxpayer or a taxing district shall have 20 days from the date of service of the petition or complaint to file a cross-petition of appeal with a county board of taxation or a counterclaim with the Tax Court, as appropriate.

Within 10 days of the completion of the bulk mailing of notification of assessment, the assessor 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. If a county board of taxation completes the bulk mailing of notification of assessment, the tax administrator of the county board of taxation shall within 10 days of the completion of the bulk mailing prepare and keep on file a certification setting forth the date on which the bulk mailing was completed.

A taxpayer shall have 45 days to file an appeal upon the issuance of a notification of a change in assessment. An appeal to the Tax Court by one party in a case in which the Tax

Court has jurisdiction shall establish jurisdiction over the entire matter in the Tax Court. In the event that one party files a petition of appeal with the county board of taxation and one party files a complaint directly with the Tax Court challenging the same local property tax assessment, the county board of taxation shall issue a [Memorandum of Judgment with Code #6B – Dismissal Without Prejudice – Hearing Waived] judgment under N.J.S.A. 54:3-26 dismissing the petition without prejudice to permit an appeal from that judgment to the Tax Court. All appeals to the Tax Court hereunder shall be in accordance with the provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

b. No taxpayer or taxing district shall be entitled to appeal either an assessment or an exemption or both that is based on a financial agreement subject to the provisions of the "Long Term Tax Exemption Law" under the appeals process set forth in subsection a. of this section.

c. In the case of a municipality located in a county wherein the county board of taxation is participating in the demonstration program established in section 4 of the "Real Property Assessment Demonstration Program," P.L.2013, c.15 (C.54:1-104), absent good cause, a property owner shall not be entitled to appeal an assessment on a parcel of real property if the assessor's or the county board of taxation's request to internally inspect the property , made after the appeal is filed, has been refused by the property owner.