

To: New Jersey Law Revision Commission
From: Whitney Schlimbach, Counsel
Re: Transfer of Jurisdiction in Tax Assessment Challenges Pursuant to N.J.S. 54:3-21
(*30 Journal Square Partners, LLC v. City of Jersey City*, 32 N.J. Tax 91 (Tax 2020))
Date: March 7, 2022

MEMORANDUM

Project Summary

In November 2021, the New Jersey Law Revision Commission (Commission) Staff proposed a project based on the Tax Court decision *30 Journal Square Partners, LLC v. City of Jersey City*.¹ In that case, the Tax Court considered the “proper procedural resolution of a dual filing” when opposing parties challenging the same property assessment file in different forums.²

Jurisdiction over challenged assessments is governed by N.J.S. 54:3-21, which directs that “[a]n appeal to the Tax Court by one party . . . shall establish jurisdiction over the entire matter in the Tax Court.”³ The statute does not provide any guidance to accomplish the transfer of jurisdiction in the event that the one party selects the County Board of Taxation and the other selects the New Jersey Tax Court.

During the November 2021 Commission meeting, preliminary research and outreach was requested “to determine what the status of the issue is within the court system” and “whether any action will be taken by the Judiciary” before authorizing further steps.⁴ The Commission additionally sought information related to the legislative history of the original choice of forums clause in N.J.S. 54:3-21a.(1), and ensuring that the New Jersey Rules of Court do not address the issue raised in *30 Journal Square Partners*.⁵

Background

In *30 Journal Square Partners, LLC v. City of Jersey City*, 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.⁶ About a month later, the Owner filed a timely direct complaint challenging the same assessments with the Tax Court.⁷ As noted, both filings were timely.⁸

¹ 32 N.J. Tax 91 (N.J. Tax 2020); N.J. Law Revision Comm’n, Memorandum Transfer of Jurisdiction in Tax Assessment Challenges Pursuant to N.J.S. 54:3-21 (*30 Journal Square Partners, LLC v. City of Jersey City*, 32 N.J. Tax 91 (Tax 2020)) (Nov. 18, 2022), www.njlrc.org (last visited Mar. 3, 2022).

² *30 Journal Square Partners, LLC v. City of Jersey City*, 32 N.J. Tax 91, 96 (N.J. Tax 2020).

³ N.J.S. 54:3-21a.(1).

⁴ N.J. Law Revision Comm’n, *Minutes of NJLRC Meeting*, at *6, Nov. 18, 2021, www.njlrc.org (last visited Mar. 1, 2022).

⁵ *Id.*

⁶ *30 Journal Square Partners*, 32 N.J. Tax at 93.

⁷ *Id.*

⁸ *Id.*

The Tax Court determined that, pursuant to N.J.S. 54:3-21a.(1), the Owner’s filing vested “the Tax Court . . . [with] exclusive jurisdiction over the tax appeals,” including the City’s filing with the Hudson County Board of Taxation.⁹ Although the parties did not dispute the Tax Court’s jurisdiction, they disagreed on the appropriate process for transferring the City’s filing to the Tax Court.¹⁰

The 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 without prejudice was the appropriate procedure.¹¹ In reaching its holding, the *30 Journal Square* Court first determined that it is “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. 54:3-21a.(1).¹²

After resolving the jurisdictional question, the Court discussed the appropriate procedural mechanism for transferring a County Board petition to the Tax Court pursuant to N.J.S. 54:3-21. The Court adopted the reasoning in *Twp. of South Brunswick v. Princeton Orchards Assocs. L.L.C.*, an unpublished opinion, which addressed the same issue.¹³ The *Journal Square* Court agreed with the *South Brunswick* Court’s conclusion that the statute “clearly and unequivocally accords both the taxpayer and the taxing district an independent right to appeal from a property tax assessment.”¹⁴ However, the *South Brunswick* Court also recognized that “a direct appeal [to the Tax Court] deprives the county board from continuing to retain subject matter jurisdiction and thereafter deciding the case on its merits.”¹⁵

Seeking to harmonize these two principles, the *Brunswick* Court endorsed the County Board’s practice of dismissing or affirming an assessment without prejudice, “generally deemed as [a judgment] entered without an adjudication of the merits of the case.”¹⁶ Applying this reasoning to the *30 Journal Square* parties, the Court directed the City to request a dismissal without prejudice from the County Board.¹⁷ Finally, the Court opined “that the Legislature should . . . provide the procedural mechanisms to be followed by the parties and the county boards of taxation” in the situation which arose in *30 Journal Square*.¹⁸

⁹ *Id.* at 95.

¹⁰ *Id.*

¹¹ *Id.* at 102 (ordering the city to request a “Memorandum of Judgment with Code #6B – Dismissal Without Prejudice – Hearing Waived”).

¹² *Id.* at 98.

¹³ *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 . . .”).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 103.

¹⁸ *Id.* at 102.

Research and Outreach Requested by the Commission

During its November 2021 meeting, the Commission directed Staff to determine whether the Administrative Office of the Courts or the Judiciary have undertaken any work with respect to the issue discussed in *30 Journal Square*.¹⁹ Additionally, the Commission requested that Staff provide information related to the legislative history of the choice of forums clause in N.J.S. 54:3-21a.(1), and ensure that the New Jersey Rules of Court do not address the issue raised in *30 Journal Square*.²⁰

Outreach to the Administrative Office of the Courts

Initially, 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 “[t]he Judiciary supports the Commission’s plan to review this issue.”²¹ On behalf of the Judiciary, Ms. Johnson wrote that

the statute is unclear as to what happens in terms of transferring jurisdiction where opposing parties have not selected the same forum and we agree that clarification from the Legislature would be beneficial. We welcome the opportunity to review any proposed language and strongly support the Commission’s efforts to address this issue.²²

Legislative History of the Choice of Forums Language in N.J.S. 54:3-21

The choice of forum clause was added to the statute in 1979²³ soon after the New Jersey Tax Court was established.²⁴ 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).²⁵ The Tax Committee was formed in 1976 pursuant to Senate Resolution No. 30, with the stated goal of making “recommendations to the Senate for the professionalization, modernization and improvement of the [state tax appeal] procedure.”²⁶

¹⁹ N.J. Law Revision Comm’n, *Minutes NJLRC Meeting*, at *6, Nov. 18, 2021, www.njlrc.org (last visited Mar. 1, 2022) (directing Staff to “determine what the status of the issue is within the court system and submit an interim report to identify whether any action will be taken by the Judiciary . . .”).

²⁰ *Id.* (requesting Staff “confirm whether the New Jersey Rules of Court address the procedural mechanism involved in the transfer of matters from one entity to another” and provide more information “about the legislative history of this section.”).

²¹ Jan. 24, 2022, Email from Andrea Johnson, Legislative Liaison, New Jersey Judiciary.

²² *Id.*

²³ N.J.S.A. 54:3-21 (West 2022) (L.1979, c. 113, § 1, eff. July 1, 1979).

²⁴ 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).

²⁵ 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*, 129th S., 2nd Sess., at 3-4 (June 26, 1977).

²⁶ S.R. 30, 129th S., 1st Sess. (N.J. 1976).

Public hearings were held before the Tax Committee in 1977.²⁷ Three individuals testified in support of allowing direct appeals to the Tax Court on assessments over \$100,000 including: Judge John F. Evers of the Division of Tax Appeals; Kenneth Walker, President of the American Institute of Real Estate Appraisers; and Frank Haines, Executive Director of the New Jersey Taxpayers Association.²⁸

Following the two public hearings in March 1977, the Tax Committee issued its report making twelve recommendations, including abolishing the Division of Tax Appeals and replacing it with a tax court of limited jurisdiction in the Judicial branch.²⁹ The Tax Committee acknowledged that “[o]ne of the most consistent 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.”³⁰ However, the Tax Committee “strongly recommend[ed]” that the proposal to permit direct appeals “not be implemented at [that] time.”³¹

While the 1977 Report focused on reform of the state tax appeal process only,³² a previous report issued by the New Jersey Tax Policy Committee (1972 Report) provided an in-depth overview of the entire New Jersey tax system.³³ Part 2 of the 1972 Report focused on the property tax and made recommendations to improve, standardize, and professionalize the appeals system at both the county board and state level.³⁴ Among the recommendations was that “[d]irect appeal to the tax court should be permitted, at the election of either party, where the value of property subject to the appeal exceeds \$100,000.”³⁵

Despite the Tax Committee’s position on the issue, the language in N.J.S. 54:3-21 allowing direct appeals to the Tax Court when an assessment exceeded a \$750,000 threshold was approved in June 1979.³⁶ At the 1979 Annual Conference on Taxation, then-Director of the Division of Taxation, Sidney Glaser, explained that, with respect to the direct appeal legislation, “some concern has been expressed . . . on the theory that county boards may lose some of their expertise

²⁷ Public Hearing Before the S. Special Comm. on Tax Appeal Procedures, Vol. I, 129th S., 2nd Sess. (Mar. 15, 1977); Public Hearing Before the S. Special Comm. on Tax Appeal Procedures, Vol. II, 129th S., 2nd Sess. (Mar. 30, 1977).

²⁸ Public Hearing Before the S. Special Comm. on Tax Appeal Procedures, Vol. II, 129th S., 2nd Sess., at 3, 49 & 54 (Mar. 30, 1977) (Judge Evers testified that direct appeals to the Tax Court “would . . . eliminate the time and effort and expense of appearing before the county boards” and Mr. Walker testified that direct appeals would “allow[] more time for the [appeals] under \$100,000” to be reviewed by the county boards).

²⁹ 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 10.

³⁰ *Id.* at 72-73.

³¹ *Id.* at 74 (recommending consideration of the direct appeal proposal be delayed “until such time as the backlog of appeals pending before the tax court is significantly decreased.”).

³² 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*, 129th S., 2nd Sess. (June 26, 1977)

³³ Part 2 of the Report of the New Jersey Tax Pol’y Comm., *The Property Tax*, at 1 (Feb. 23, 1972) (“The main thrust of the entire Report is massive relief of the property tax, and . . . underscores that the property tax is not a single property tax but rather 567 different property taxes—one for each municipality in the State.”).

³⁴ *Id.* at 64-65.

³⁵ *Id.* at 65.

³⁶ L.1979, c. 113, § 1, eff. July 1, 1979, later codified as N.J.S. 54:3-21.

in larger cases, [but] it is believed that the legislation will save time in disposing of large property tax appeals.”³⁷

The enactment of the choice of forum clause in N.J.S. 54:3-21 was part of a comprehensive re-structuring of the tax appeal system in New Jersey, prompted in large part by the tremendous backlog in the Division of Tax Appeals.³⁸ Although the 1977 Report was closest in time to the enactment of the legislation, and did not include this specific proposal, legislative review of the New Jersey system of taxation stretched back many years, as did public and legislative dissatisfaction with it.³⁹

Staff also reviewed the New Jersey Rules of Court, which do not provide guidance with respect to the process of transferring tax assessment petitions from the County Board to the Tax Court in the situation addressed in *30 Journal Square*.⁴⁰

Legislation

Currently, there is one piece of pending legislation that concerns N.J.S. 54:3-21, but it does not address the procedural issue raised in *30 Journal Square Partners, LLC v. City of Jersey City*.⁴¹

Conclusion

Staff seeks authorization to conduct additional research and outreach to determine whether it would be appropriate to modify N.J.S. 54:3-21 to clarify the procedural mechanism for transferring jurisdiction to the Tax Court when there are dual filings in the Tax Court and the County Board by opposing parties, as discussed by the Court in *30 Journal Square Partners, LLC v. City of Jersey City*.⁴²

³⁷ 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).

³⁸ 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 . . .”).

³⁹ See Public Hearing Before the S. Special Comm. on Tax Appeal Procedures, Vol. II, 129th S., 2nd Sess., at 53-54 (Mar. 30, 1977) (statement of Lawrence Lasser, Esq., subsequently appointed Presiding Judge of the New Jersey Tax Court, 1979 to 1994) (summarizing history of tax court legislation in New Jersey: “[i]n 1960, I believe it was that Senator Deamer first introduced a tax court bill. That bill received the approval of the New Jersey State Bar Association. Since that time State tax court bills have been proposed, have been introduced. In 1974 that bill passed the Assembly, did not pass the Senate. The New Jersey State Bar Association has, through that entire period of time, endorsed a full-time judicial tax court. During that period of time I, and other members of the Tax Committee of the Tax Section of the State Bar Association, have worked together with Legislators, members of the Court, in seeking to achieve a bill that would be acceptable to all. To this date, we have not succeeded.”).

⁴⁰ N.J. R. Tax Ct. R. 8:1, et seq. (West 2022).

⁴¹ S.B. 823, 220th Leg., 1st Sess. (N.J. 2022).

⁴² 32 N.J. Tax 91, 96 (N.J. Tax 2020).