



When a Stranger Calls

Municipal and Third-Party Property Tax Appeals

by David B. Wolfe, Maria H. Yoo and Douglas M. Allen

New Jersey's property tax code is a comprehensive scheme of taxation providing taxpayers with a number of options for relief, including a significant number of tax exemptions, as well as a mechanism for appealing a property's assessed valuation.

Although the general perception is that property tax appeals are the sole domain of taxpayers, New Jersey's tax code allows both a municipality, as well as an unrelated third-party taxpayer, to file a tax appeal on any property located within the taxing district or county. This provision ensures that all taxpayers are paying their fair share of taxes, but it can also inflict financial damage on those who are forced to defend the validity of their assessment or exemption. Although historically rare, the number of appeals by municipalities and third-party taxpayers has increased dramatically in the last few years.

This article addresses municipal and third-party property

tax appeals, beginning with a review of the general provision providing for property tax appeals in New Jersey. The article also discusses how property tax appeals by parties other than the principal taxpayer arise, and the effect such cases have on both the taxpayer and the municipality. In an attempt to illuminate the legal issues that may develop in these appeals, this article also reviews recent case law and proposed legislation amending the property tax appeal provision.

Statutory Framework

Through N.J.S.A. 54:3-21, the New Jersey Legislature allows taxpayers in New Jersey to challenge the assessed valuation of real property. The statute provides that: 1) a taxpayer aggrieved by the assessed valuation of the taxpayer's property; 2) a taxpayer feeling discriminated by the assessed valuation of other property in the county; 3) a taxing district that may feel discriminated against by the assessed valuation of property in the

taxing district; or 4) a taxing district that may feel discriminated by the assessed valuation of property in another taxing district in the county, may file a petition of appeal to the county board of taxation. The statute also provides that if the assessed valuation of the property subject to appeal exceeds \$1,000,000, the taxpayer may file its appeal directly with the New Jersey Tax Court.¹

Historically, the majority of tax appeals were filed by individual taxpayers appealing the assessment on residential and commercial property they themselves owned, occupied, or leased. However, as local governments seek to maintain their ratable base, particularly in response to the two percent cap imposed on increases to municipal budgets, pursuant to P.L.2010, Chapter 44, the number of appeals filed by municipalities has significantly increased in recent years. Although less common, N.J.S.A. 54:3-21 also provides third-party taxpayers the right to challenge the assessment or tax exemption of other property located within their municipality or county.

One recent high-profile case of a private university demonstrates that third-party taxpayers are becoming more aggressive in their pursuit for tax equality. These examples illustrate how a taxpayer's assessment could be challenged without it putting its assessment in play by filing its own tax appeal first.

Municipal Challenges

As the avoidance of discriminatory taxation is a paramount concern under the New Jersey Constitution,² property tax appeals are a two-way street,³ providing a means for relief by both the taxpayer and the municipality feeling 'aggrieved' or 'discriminated' against by the assessment.⁴ Additionally, in a case where discrimination is at issue, the tax court on its own may increase a property's assessment. The New Jersey Supreme Court, in *F.M.C. Stores Co. v. Morris Plains Borough*,⁵ determined that where an issue

of discrimination is at stake, the tax court is "obligated to increase or decrease an assessment notwithstanding the failure" of the municipality to file an appeal.

In an attempt to protect municipal operating budgets, municipalities have made tax appeals of potentially under-assessed properties a part of managing municipal finances. For example, as of Oct. 12, 2016, a total of 565 property assessments have been appealed on properties located in the city of Elizabeth.⁶ Significantly, of these, over 60 percent were filed by the taxing district itself.⁷ Out of a random sample of appeals filed by the city of Elizabeth over a four-year period, 82 percent were direct appeals filed by the municipality, as opposed to the municipality's cross-appeals filed in response to an individual taxpayer's appeal. (On a procedural note, N.J.S.A. 54:3-21 provides the taxpayer defending its assessment or exemption 20 days to cross-file its own appeal.)

With respect to the threshold burden in challenging a tax assessment, the New Jersey Tax Court begins its analysis with the well-established principle that "[o]n appeal a municipality's original tax assessment is entitled to a presumption of validity."⁸ The strength of the presumption is exemplified by the nature of the evidence that is required to overcome it.⁹ As this presumption attaches to the quantum of the tax assessment, the appealing party, regardless of whether that party is the municipality, an unrelated third-party, or the taxpayer itself, has the burden of proof that the assessment is erroneous by cogent evidence that is "defined, positive and certain in quality and quantity to overcome the presumption."¹⁰

Third-Party Challenges

Unrelated third parties have also contributed to an increase in property tax appeals. The right to appeal the property taxes on another's property was discussed by the tax court in the case of

Borough of Freehold v. WNY Properties L.P./Post & Coach.¹¹ In *WNY Properties*, the court established *in dicta* that N.J.S.A. 54:3-21, "which authorizes an appeal by 'a taxpayer...feeling discriminated against by the assessed valuation of other property in the county,'"¹² provides a taxpayer within a taxing district the necessary standing to file an appeal of the assessment of another taxpayer's property. However, such an appeal necessitates that the one challenging a property's assessment or tax exemption must be a taxpayer in the county where the subject property is located.¹³ The reason for this is that the statute, which provides the right to appeal, is meant to prevent discriminatory tax practices.¹⁴ If the party did not pay taxes within the same county as the property under appeal, the third party could not claim that he or she was unconstitutionally discriminated against by the assessment under the uniformity clause of the New Jersey Constitution.¹⁵

As previously discussed, properties that are under-assessed discriminate against other taxpayers by forcing them to pay an unequal percentage of the tax burden. The New Jersey Supreme Court has stated that a taxpayer is similarly discriminated against by another's unlawful property tax exemption.¹⁶

As for the burden of proof required when an appeal is filed on a property's valuation, the burden of proof to overcome the presumption of correctness attached to the assessment is on the party filing the appeal.¹⁷ However, typically in the case of a tax exemption appeal, it is not the party filing the appeal that bears the burden of proof, but rather the entity receiving the tax exemption.

The fundamental approach of our [tax] statutes is that ordinarily all property shall bear its just and equal share of the public burden of taxation....Statutes granting exemption from taxation represent a departure and consequently they are most

strongly construed against those claiming exemption.¹⁸

In a recent high-profile case, the burden of proof requirement was challenged by the taxpayer when a third party filed an appeal against a private university's tax-exempt status. In *Fields v. Trustees of Princeton University*,¹⁹ four Princeton residents filed a complaint challenging the property tax exemptions granted by the municipal tax assessor on 21 parcels owned by Princeton University. N.J.S.A. 54:4-3.6 provides a property tax exemption for various categories of property when used for charitable, educational, religious, moral and mental improvement, or hospital purposes. To be entitled to the property tax exemption under N.J.S.A. 54:4-3.6, the following three requirements must be met: 1) the property owner must be organized exclusively for tax-exempt purposes; 2) the property must be actually and exclusively used for tax-exempt purposes; and 3) its operation and use of the property may not be conducted for profit.²⁰ The statute also allows for a partial property tax exemption if a portion of the property is used for a nonexempt purpose. The municipal tax assessor granted tax-exempt status for all of the parcels owned by Princeton University in 2012, 2013 and 2014. The university responded to the filing of an appeal against the university's tax-exempt status by filing a motion seeking the court's determination regarding which party had the burden of proof.

In response to the motion, the tax court ruled that Princeton University had the burden of proving its entitlement to its tax-exempt status, even though the challenge was filed by a third party (and not by the municipality). In his ruling, Tax Court Judge Vito Bianco rejected Princeton's argument that the presumption of validity afforded to an assessor's original valuation assessment extends to an assessor's determinations regarding tax exemptions. Judge Bianco reasoned

that the burden of proving tax-exempt status rests with the exempt entity, even in cases of an appeal by third parties.

The university appealed the tax court's ruling; however, on Jan. 5, 2016, the New Jersey Superior Court, Appellate Division, denied Princeton University's motion to appeal.

The tax court's ruling in *Fields v. Princeton University* may have a substantial impact on tax exemptions as it confirms that even in cases of an appeal filed by a third party, the burden of proof remains on the entity claiming the tax exemption. This is a significant ruling because this transfer of the burden of proof could make nonprofit property owners vulnerable to arbitrary or politically motivated challenges that would be costly and time-consuming to defend.

In response to this decision, several new bills were introduced in the New Jersey Legislature. In May and June 2016, S-2212 (Singer)²¹ and A-3888 (Gusciora)²² were introduced. These bills propose to amend the existing statute to limit the ability of third-party taxpayers in challenging the assessment and/or tax-exempt status of property owned by others. According to the statement accompanying the bill introduced by Senator Singer, S-2212 would reduce the number of third-party property tax appeals but would not disturb the ability of municipalities to appeal the assessment and/or the tax-exempt status of any property in the county.²³ Furthermore, these bills would clarify that the same process applies for challenging the exempt status of property as for challenging a property's assessed valuation.

If S-2212 and A-3888 are adopted as currently introduced, the proposed amendment to the existing statute would eliminate third-party taxpayer appeals challenging the assessed valuation and/or the tax-exempt status of another taxpayer's property. However, if adopted, the constitutionality of these proposals is likely to be challenged.

As the Supreme Court has stated,

No statute can overturn the New Jersey Constitution's guarantee to its citizens that real estate "shall be assessed according to the same standard of value" or deny a citizen equal protection under the fourteenth amendment. If there is a conflict between the constitutional and statutory standards, this Court has held unequivocally that the constitutional guarantee of equality must prevail.²⁴

While it has been acknowledged that third-party property tax appeals have the potential to be used for "mischief and vexatiousness," the Appellate Division has also stated it has confidence that New Jersey's system of taxation can prevent abuse, and that the need to ensure the equal treatment in the realm of local property taxes outweighs the possible dangers.²⁵

Conclusion

The recent success of the plaintiffs in the Princeton University case may only bolster the confidence of other third-party taxpayers in filing appeals as a means of financial activism. It is also worth noting that the recent proposals intended to limit the ability of third-party taxpayers to file such appeals may not be adopted or pass constitutional scrutiny. Additionally, a continued uncertain business climate will provide many municipalities with an incentive to look to tax appeals as a way to further secure their ratable base. Real estate practitioners should alert their clients to this growing trend so they are prepared to take speedy action should they be served with an appeal filed by a municipality and/or a third party. ☺

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ENDNOTES

1. The \$750,000.00 threshold was increased to \$1 million by P.L. 2009, Chapter 251, section 1 (effective Jan. 16, 2010).
2. N.J. Const. art. 8, sec. 1, para. 1(a).
3. *Devonshire Dev. Ass'n. v. Hackensack*, 2 N.J. Tax 392, 184 N.J. Super. 371, 446 A.2d 201 (Tax 1981).
4. N.J.S.A. 54:3-21.
5. *F.M.C. Stores Co. v. Morris Plains Borough*, 100 N.J. 418, 495 A.2d 1313 (1985).
6. Local Property Tax Cases Docketed Lists, <http://www.judiciary.state.nj.us/taxcourt/njtaxplst16.pdf>.
7. *Id.*
8. *Pantasote Co. v. City of Passaic*, 100 N.J. 408,

- 412, 495 A.2d 1308, 1310 (1985).
9. *Id.* at 413.
10. *MSGW Real Estate Fund, LLC*, 18 N.J. Tax at 373-374 (quoting *Pantasote Co.*, 100 N.J. at 413).
11. 20 N.J. Tax 588 (Tax 2003).
12. *Freehold Borough v. WNY Properties L.P./Post & Coach*, 20 N.J. Tax 588, FN5 (2003).
13. *Farmland Dairies, Inc. v. Borough of Wallington*, 29 N.J. Tax 310, 313 (Tax 2016); see also *Brunson v. Rutherford Lodge No. 547 of Benevolent & Protective Order of Elks*, 128 N.J. Super. 66 (Law Div. 1974).
14. N.J. Const. art. 8, sec. 1, para. 1(a); see also *City of Elizabeth v. 264 First St., LLC*, 28 N.J. Tax 408, 425 (Tax 2015) (“Our Supreme Court has long recognized the constitutional right of taxpayers to ‘equality of treatment in sharing the duty to pay real estate taxes.’”)(quoting *Township of W. Milford v. Van Decker*, 120 N.J. 354, 360-361, 576 A.2d 881 (1990)).
15. N.J. Const. art. 8, sec. 1, para. 1(a).
16. *Post v. Warren Point Volunteer Fireman’s*

- Ass’n, 19 N.J. Misc. 367, 19 A.2d 636 (1941).
17. See discussion *supra* p. 2.
18. *International Sch. Servs., Inc. v. West Windsor Twp.*, 207 N.J. 3, 15, 21 A.3d 1166, 1173 (2011)(quoting *Princeton Univ. Press v. Borough of Princeton*, 35 N.J. 209, 214, 172 A.2d 420 (1961).
19. 28 N.J. Tax 574, 579 (Tax 2015).
20. See *Paper Mill Playhouse v. Millburn Twp.*, 95 N.J. 503, 506 (1984). See also *Hunterdon Med. Ctr. v. Readington Twp.*, 195 N.J. 549, 562 (2008).
21. S. 2212, 217th Leg., 1st Sess. (N.J. 2016).
22. Assemb. 3888, 217th Leg., 1st Sess. (N.J. 2016).
23. Statement, S. 2212, 217th Leg., 1st Sess. (N.J. 2016).
24. *Township of W. Milford v. Van Decker*, 120 N.J. 354, 364 (1990).
25. *Atrium Dev. Corp. v. Cont’l Plaza Corp.*, 214 N.J. Super. 639, 643, 520 A.2d 827, 829 (App. Div. 1987), *appeal granted* 107 N.J. 167, 526 A.2d 222, *appeal dismissed* 108 N.J. 590, 531 A.2d 1360.

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