

# 74th Annual Princeton Conference

*"2010 – Appraisers Now, More Than Ever"*

*Thursday, April 15, 2010*

*Metro New Jersey  
Chapter  
of the  
Appraisal Institute*





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*Presented by*

*The Honorable Joseph M. Andresini, JTC*

*Thomas Olson, Esq.*

*Anthony F. Della Pelle, Esq.*

*[www.mckirdyriskin.com](http://www.mckirdyriskin.com)*



# REAL PROPERTY TAX APPEALS IN NEW JERSEY

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- Analyzing the Assessment and the Application of Chapter 123.
- Filing Deadlines
- Fees/Forms
- Payment of Taxes Pending Appeal
- Counterclaims by Municipalities
- Freeze Act Judgments
- Added and Omitted Assessments
- Refund Procedures
- Request for Income Information by Assessor Pursuant to *N.J.S.A. 54:4-34* (Chapter 91)
- Chapter 101 (*N.J.S.A. 54:4-23*)
- Case Law Update



# The Appraiser

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- (i) All property in the State of N.J. is assessed at Fair Market Value as of Oct. I of the pre-tax year. *N.J.S.A. 54:4-23.*
- (ii) Chapter 123 must then be applied to Fair Market Value to arrive at assessed value. *N.J.S.A. 54:1-54:1-35. 1 et. seq., 54:51A-6.*
- (iii) Chapter 123 includes a 15% corridor or “common level range”
- (iv) Chapter 123 does not apply when there has been a general revaluation or reassessment in the municipality.
- (v) Relevant decisions:
  - *Rudd v. Cranford Twp.*, 4 N.J. Tax 236 (Tax Ct. 1982)
  - *Murnick v. Asbury Park*, 95 N.J. 452 (1984)

**QUIET PLEASE**  
**Appraiser**  
 **AT WORK**



# Filing Deadlines

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18		20	21	22	23
24	25	26	27	28	29	30

**APRIL**

- ( i ). Strictly construed – April 1 of tax year to be appealed May 1 for municipalities that have undergone revaluation or reassessment.
- ( ii ). Must file with County Board of Taxation or can go directly to Tax Court if assessment over \$1,000,000.00. *N.J.S.A. 54:3-21*, and *R. 8:4-2(4)*.
- ( iii ). If appeal not filed in time, then court lacks jurisdiction to hear appeal.
- ( iv ). Appeals from judgments of County board of Taxation must be filed within 45 days of date of mailing of judgment. *N.J.S.A. 54:51A-9*, *R.8.4-22*.  
Deadline strictly construed.



( v ).

Relevant Decisions:

- *Appeal of Twp. of Monroe*, 289 N.J. Super. 138 (App. Div. 1995), *certif. denied* 144 NJ 172 (1996).



# Fees / Forms

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- ( i ). **County Board of Taxation** fees are on a sliding scale based on assessed value.
  
- ( ii ). **Tax Court Complaint** - \$200.00 for first lot plus \$50.00 each additional adjacent parcel. Small claims \$35.00 plus \$10.00 each additional adjacent parcel.





# Payment of Taxes Pending Appeal

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- ( i ). At time of filing Complaint with County Board of Taxation, or Tax Court, all taxes and municipal charges must be paid up to and including first quarter of year under appeal – strictly construed. (Can be cured by payment made prior to return date of municipality’s motion to dismiss.) *N.J.S.A. 54:3-27*.
- ( ii ) At time of appeal filed from judgment of County Board of Taxation, all taxes due and owing for that year must be paid – *N.J.S.A. 54:51A-1(b)*. CANNOT BE CURED BY PAYMENT PRIOR TO MOTION. *Schneider v. City Of East Orange*, 196 N.J. Super. 587 (App. Div. 1984), aff’d o.b. 103 N.J. 115 (1985), cert den. 479 U.S. 824, 107 S. Ct. 97, 93 L. Ed. 2d 48 (1986). Strictly construed.
- ( iii ) Relevant Decisions:
- *Muscarelle Rev. Co. v. Manalapan Twp.*, 13 N.J. Tax 330 (Tax 1993) (good review of relevant cases.)
  - *Muscarelle v. Saddle Brook*, 14 N.J. Tax 453 (Tax CT. 1995) (en banc Tax Court decision affirming dismissal.)
  - *Farrell v. Atlantic City*, 10 N.J. Tax 336 (Tax Ct. 1989) (municipality must make motion to dismiss within reasonable time.)
  - *Milltown Industrial Sites v. Milltown*, 12 N.J. Tax 581 (Tax CT. 1992) aff’d 15 N.J. Tax 144 (App. Div. 1993). (municipal charges which must be paid include municipal sewer and electric charges where applicable.)



# Counterclaims by Municipalities

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- ( i ). Municipality may file its own Complaint prior to April 1 deadline same as taxpayer. May also file a counterclaim seeking an increase in the assessment. *N.J.S.A. 54:3-21, 54:51A-1(a), R. 8:4-3(a)*. Must be filed within 20 days of date of service complaint even if the 20 days falls after the first of April.
- ( ii ). If no counterclaim, then taxpayer can withdraw complaint and no increase possible.
- ( iii ). Increase can be obtained even if no counterclaim if Court finds value outside Chapter 123 lower limit.
- ( iv ). Relevant Decisions:
  - *Weyerhauser v. Closter*, 190 N.J. Super. 588 (App. Div. 1983)
  - *FMC Stores v. Borough of Morris Plains*, 100 N.J. 418 (1985) (increase in assessment cannot be obtained in a revaluation year absent a counterclaim.)

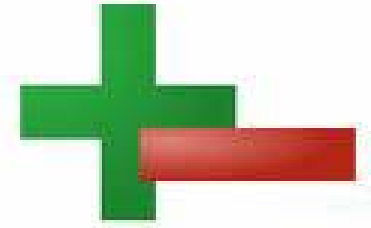




# Freeze Act Judgments



- ( i ). Allows a final judgment of the Tax Court or County Board of Taxation to be “frozen” for the two succeeding years (“Freeze Act Years”), *N.J.S.A.* 54:51A-8, *N.J.S.A.* 54:3-26.
  
- ( ii ). Enacted to benefit taxpayer and can only be invoked by taxpayer.
  
- ( iii ). Freeze Act will not apply if (1) there is a general revaluation in the municipality of (2) the value of the property has changed as of the assessment dates for one or both of the Freeze years. This change must be substantial and meaningful.
  
- ( iv ). Relevant Decisions:
  - *Clearview Gardens v. Parsippany –Troy-Hills Twp.*, 196 N.J. Super. 323 (App. Div. 1990)
  - *Cumberland Farms v. Burlington Twp.*, 10 N.J. Tax 255 (tax Ct. 1988) (municipality must demonstrate a substantial and material change in value has occurred in property after assessing date to defeat the Freeze Act.)



# Added and Omitted Assessments

- ( i ). Added and omitted assessments procedures governed by Statute, *N.J.S.A* 54:4-63.1. Bills for added assessments must be mailed by the Tax Collector to the taxpayer at least one week prior to November 1.
- ( ii ). Taxpayer must file appeals with the local County Board of Taxation by December 1. May file directly with the Tax Court if assessment is more than \$1,000,000.00. *N.J.S.A.* 54:4-63.11.
- ( iii ). Appeals from County Tax Board judgments may be filed within 45 days.
- ( iv ). Taxes do not have to be paid as a condition of appeal.
- ( v ). Entire parcel must be valued both before and after the addition (not just the added structure). *N.J. Foreign Trade Inc. v. Mt. Olive*, 10 N.J. Tax 330 (Tax Ct. 1989), aff'd 242 N.J. Super. 170 (App. Div, 1990).
- ( vi ). Omitted assessments have two appeal methods. Under the first, the tax assessor files a complaint with the local County Board of Taxation, which then schedules a hearing. *N.J.S.A.* 54:4-63.12 et. seq. Owner must be given at least 15 days. written notice of hearing.
- (vii). Alternate method of assessing omitted property is in *N.J.S.A.* 54:4-63.31 et. seq., this method follows same procedure as added assessment procedure above.
- (viii). Relevant Decisions:
  - *Inwood Owners v. Little Falls Twp.*, 216 N.J. Super. 485 (App. Div. 1987) certif. den. 108 N.J. 184 91987) (taxes do not have to be paid as a condition of appeal.)
  - *Harrison Realty v. Harrison*, 16 N.J. Tax 375 (Tax Ct. 1997) (mere “retrofitting, upgrading or remediation of deferred maintenance” did not justify an added assessment.)
  - *Van Orden v. Twp. of Wyckoff*, 22 NJ Tax 31 (Tax Ct. 2005) (tax assessment for deck added to home could not be imposed as added or omitted full-year assessment for year after deck was added to home.)





# Refund Procedures

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- ( i ). Refunds must be paid by the municipality within 60 days of entry of a final judgment. *N.J.S.A. 54:3-27.2.*
- ( ii ). Interest on the refund, unless waived by taxpayer as condition of settlement, is set at the statutory rate of 5% per annum. *N.J.S.A. 54:4-134* allows a municipality to offset any delinquencies in taxes owed by a taxpayer against any refunds due.
- ( iii ) Relevant Decisions:
- *Pine Street Management v. East Orange*, 15 N.J. Tax 316 (Tax Ct. 1995) ( Municipality has right of set-off *N.J.S.A. 54:4-134* took precedence over attorney's lien for fees on refund).
  - *Universal Folding Box Co. v. Hoboken*, 20 N.J. Tax 1 (Tax Ct. 2002) (“Final Judgment” means after conclusion of all appeals).





## Request for Income Information by Assessor Pursuant to *N.J.S.A. 54:4-34 (Chapter 91)*

- ( i ). Sent by Assessor before assessments are placed on property.
- ( ii ). Must be sent to owner by Certified Mail and must include copy of Statute.
- ( iii ). Failure of owner to respond w/in 45 days may result in dismissal of appeal - Statute strictly construed by courts.
- ( iv ). Relevant decisions:
  - *Ocean Pines Ltd. v. Pt. Pleasant*, 112 N.J. (1988) Owner entitled to reasonableness hearing after complaint dismissed.)
  - *Tower Center Assocs. v. East Brunswick*, 286 N.J. Super. 433 (App. Div. 1996). (Owner must object to form of request within 45 day period.)
  - *Westmark Partners v. West Deptford Twp.*, 12 N.J. Tax 591 (Tax Ct. 1992) (to be effective, a Chapter 91 request must permit the assessor to make use of the information provided prior to January 10 assessment deadline).
  - *New Plan Realty Trust v. Brick Twp.*, 23 N.J. Tax 225 (Tax Ct. 2006) (Chapter 101 does not change the time in which a Chapter 91 Request must be served).

**THANKS  
FOR YOUR  
REQUEST**

# Chapter 101 (*N.J.S.A. 54:4-23*)

- ( i ) Requires submission of and approval of a compliance plan before assessments may be changed in a non-revaluation year; (recently amended).
  
- ( ii ) Relevant decisions:
  - *BASF Corporation v. Town of Belvidere*, 22 N.J. Tax 550 (Tax Ct. 2005) (even after the passage of Chapter 101, an assessor may still change the assessment of a single property without getting approval of a compliance plan.)





# Case Law Update



## ■ Procedural Issues

- *Princeton Alliance Church v. Mount Olive Township*, \_\_ N.J. Tax \_\_ (Tax Ct.2010)
  - Tax Court holds that County Tax Board improperly dismissed taxpayer's appeal for failing to present a witness at the county tax board hearing. Based upon *VSH Realty, Inc. v. Harding Twp.*, 291 N.J. Super. 295 (App. Div. 1996), dismissal for lack of prosecution is only appropriate where the taxpayer fails to appear, but does not require that taxpayers present witnesses where "competent documentary evidence" is available, or where legitimate legal issues raised can be determined without witnesses.

## ■ Revaluation

- *Mount Laurel Twp. v. Burlington County Board of Taxation*, \_\_ N.J. Tax \_\_ (2009)
  - Tax Court remanded an appeal from a revaluation order by the Burlington County Tax Board. The record did not indicate whether the board considered the ten criteria for revaluation required by *N.J.A.C. 18:12A-1.14(b)*, or any other reason for the revaluation order, and was held insufficient to determine whether the board's order was reasonable, and that it must know the facts the board relied on before rendering a decision as to whether the revaluation order was reasonable. An indication that the Tax Court will not rubber stamp procedural decisions by local County Tax Boards, and will require that administrative procedures be followed.



# Case Law Update



## ■ Chapter 91

- *Lucent Technologies, Inc., v. Twp. of Berkeley Heights*, \_\_ N.J. \_\_ (2010)
  - NJ Supreme Court held that a taxpayer is not permitted to continue to appeal its taxes, after a municipality has learned that the taxpayer has submitted false or fraudulent information even if that information is obtained by the town after the normal time to file a motion to dismiss the appeal has expired. Here, Berkeley Heights discovered that Lucent had provided false information regarding its tenancy on the subject property and the number of tenants, but such false information did not preclude the availability of a “reasonableness” hearing.
- *1717 Realty Associates v. Borough of Fair Lawn*, (Appellate Division, 2009)
  - Borough moved to dismiss the owner’s tax appeal for 2007 after the owner did not respond to a Chapter 91 request. The owner, who was only entitled to a “reasonableness” hearing, failed to prove that the assessor’s data or methodology to arrive at the \$30 million dollar assessment was unreasonable. Appellate Division rejected owner’s argument that the difference between the suggested tax bill and the actual tax bill constituted an “excessive fine” in violation of the United States and New Jersey Constitutions. Assessment was upheld.



# Case Law Update

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## ■ Tenants' Rights

- *Aperion Enters, Inc. and Quo Non Ascendet, Inc. v. Bor. of Fair Lawn*, \_\_ N.J. Tax \_\_ (Tax Ct.2009)
  - The Tax Court held that a tenant is entitled to any refund of taxes resulting from a successful tax appeal, and that the tenant is entitled to control the appeal and has the authority to accept or reject a settlement offer by the municipality. As for the right to any refund, the Tax Court found that it would defy common sense to allow an award to the landlord when the tenant was solely responsible to satisfy all tax obligations. The Tax Court further noted that taxes are assessed against the property and not the owner, and that when the landlord had contracted away its obligation to pay the taxes, the landlord has no right to recover any property tax refund based on an overpayment by the tenant.

# Case Law Update



## ■ Environmental

- *Pan Chemical Corp. vs. Hawthorne Borough*, 404 N.J. Super. 401 (App. Div. 2009)
  - Industrial complex owned by Pan Chemical, which moved its manufacturing operations and most of its employees to a new facility in Middlesex County, leaving only three employees in Hawthorne with only two of its seven buildings remaining in use, as Pan sought to avoid or postpone a costly environmental remediation required ISRA. The Tax Court found that the buildings were in substantial disrepair, and that the property should be treated as a closed, nonoperating facility, and held that consideration of environmental clean-up costs was appropriate.
  - The Appellate Division reversed by relying on the seminal case of *Inmar Associates, Inc. v. Carlstadt*, 112 N.J. 593 (1988), which held that when property is in use, the clean-up requirement may not be triggered and the cost of clean-up may not be a factor in determining the property's true value for tax assessment purposes.
  - The Appellate Division stated that Pan Chemical wanted to “have it both ways” by having the property deemed “in use” during the years on appeal to avoid the costly clean-up mandated by ISRA, but also wanted the property to be deemed “not in use” to claim a reduced tax liability. Thus, Pan Chemical was not entitled to have the property treated as “closed” for tax assessment purposes because there could be a “windfall tax benefit to the very persons responsible for toxic conditions, even though no actual clean-up costs are incurred.”
  - While contamination may have an impact on a property's value, it may not always be considered in establishing the value of property for tax assessment purposes.