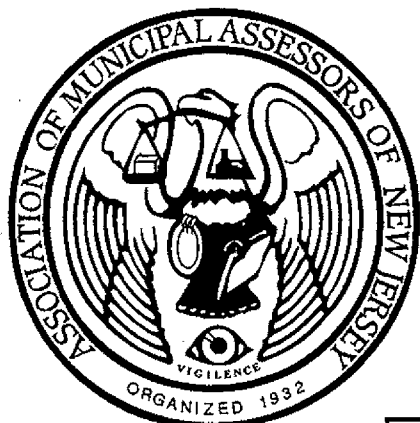


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Bulletin



VOL. 31 No. 1

February 1992

LEGAL CORNER

CRACKDOWN ON APPRAISAL COMPANIES

A momentous decision was published in the New Jersey Law Journal on January 8th by the Committee on the Unauthorized Practice of Law concerning the question of solicitation of tax appeals by individuals or property tax consultants, the processing of those appeals by such individuals or consultants and the subsequent hiring of an attorney by them. The Committee unequivocally held that such conduct constitutes the unauthorized practice of law.

Homeowners throughout New Jersey are being solicited to enter into contingent fee arrangements with property tax consultants who, in turn, engage attorneys, when necessary, to file petitions with the county board of taxation. Citing the Supreme Court decision in Stack v. P.G. Garage, 7 N.J. 118, 121 (1951), the Committee recited the bedrock principal that an appearance before the county board is quasi-judicial in nature, requiring the services of a licensed attorney. Where an individual who is not an attorney contracts to obtain a reduction in real estate taxes which necessitates an appeal to the county board, said the Committee, that individual is "illegally engaging in the unauthorized practice of law". Moreover, although not specifically mentioned in the Committee's opinion, the Stack case also held that the contract retaining an individual engaged in the unauthorized practice of law is void as against public policy and that the property owner

is under no duty to pay the consultant, even though he has obtained property tax relief.

More importantly, the Committee called into question the role of an attorney who is engaged by a tax consultant to prosecute an appeal where the tax consultant, and not the attorney, has been retained by the taxpayer. RPC 5:4 (a) expressly prohibits a lawyer from sharing fees with a non-lawyer and, in the opinion of the Committee, the engagement of a lawyer by a tax consultant and subsequent fee sharing between them violates this Rule.

For many years I have crusaded against the conduct of these so-called tax consultants who operate outside of the sphere of judicially regulated conduct because these individuals (a) possess no expertise, qualifications or license to engage in the representation of taxpayers seeking tax relief, (b) are illegally engaging in the practice of law by signing contingent fee retainer agreements in which they undertake to prosecute an appeal before our courts, (c) are charging fees for legal services and handling client monies outside of the strict supervision and regulation of the Administrative Office of the Courts and Supreme Court concerning the management of client monies retained in trust accounts and the record-keeping requirements incidental thereto, (d) are subjecting their taxpayer clients, without prior notification or warning, to the risk of assessment increases on their own appeals pursuant to Chapter 123 of the Laws of 1973 and (e) are not subject to those sections of the Rules of Professional Conduct regulating direct solicitations to prospective clients which mandate, among other things, that the solicitation be entitled "advertisement", that the experi-

(continued on next page)

(LEGAL CORNER con't.)

ence and qualifications of the individual be specifically and accurately stated without distortion and that the fee arrangement be spelled out in detail so as to avoid misunderstanding on the part of the client.

Although long overdue, I applaud the Committee for its candor and clarity in addressing this important issue. I urge all of the members of this Association to keep a watchful eye for individuals or companies engaging in business practices in violation of this opinion and to report evidence of such conduct directly to the Association president. In my judgement, the Committee's decision leaves no room for doubt that individuals or companies found guilty of these practices will be subject to prosecution under our criminal laws.

Edward G. Rosenblum

LOCAL PROPERTY TAX

Deed Restriction That Limits Affordable Housing Resale Price Must Be Taken into Account for Assessment Purposes - The issue raised in these consolidated appeals was whether the local real property assessment of an "official" affordable housing unit must take into account a deed restriction that limits its resale value. The resale price was limited to its initial purchase price plus consumer price index increases.

The Tax Court had concluded that such a deed restriction had no assessment significance. The Appellate Division of Superior Court reversed.

The taxpayers had purchased condominium units from the Housing Development Corporation of Bergen County (HDC). Purchasers, such as the taxpayers in this case who met certain criteria and purchased an HDC condominium, would be subject to resale restrictions contained in the master deed.

Ridgefield Park Village underwent a general revaluation for tax year 1986. At that time, it was determined that the affordable housing units should be assessed on the basis of fair market value, without consideration of the deed restrictions on resale.

This resulted in the condominiums having an assessed value that was about \$40,000 more than the allowable selling price. The taxpayers contended that the restriction on resale must be considered in determining the assessment value.

The Tax Court had rejected that argument. The court explained that HDC retained certain rights through the deed restrictions. However, it is a basic

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principle in New Jersey that the independent holding of separate legal interest in taxable property does not affect the method of valuing and assessing the total property.

The Appellate Division disagreed with the Tax Court's decision. The appellate court distinguished an encumbrance on land from an encumbrance on title because the latter is usually only of temporary duration. Burdens on the land ordinarily must be taken into account in assessing value. The appellate division also deemed the restriction here analogous to value-depreciating government regulation.

The court found that the resale restriction must be considered in fixing the assessment. The full and fair value of the units was substantially affected by the their maximum resale price under the deed restriction. No reason existed in law for denying that this was relevant for assessment purposes.

The Tax Court decision was reversed and the case remanded to that court to fix the value by taking the deed restrictions into account.

Prowitz v. Ridgefield Park Village - 237 N.J. Super. 453 (App. Div., 1989), rev'g 10 N.J. Tax 103 (Tax Court, 19

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ASSEMBLY No. 5310

CHAPTER 508 — LAWS OF N.J. 1991

APPROVED 1/18/92

By Assemblyman PASCRELL

AN ACT concerning tax exemption of public housing project property in certain cases and amending R.S.55:14A-20.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. R.S.55:14A-20 is amended to read as follows:


55:14A-20. Property exempt from taxes. All housing projects of a housing authority, including all property of the public body or bodies or housing authority or authorities comprising such housing projects, are hereby declared to be public property devoted to an essential public and governmental purpose. All such public property devoted to such a public purpose shall be exempt from all taxes and special assessments of the State or any political subdivision thereof as long as such public property remains under exclusive control and jurisdiction of a housing authority or public body which owns or holds such property, and for a period not exceeding 15 years after the transfer of title thereto pursuant to a program of home ownership opportunities, as authorized under R.S.55:14A-19, if (1) such continued exemption is determined by the local housing authority to be necessary to the financial feasibility of transition from public to private ownership, (2) the resident owners of the resident management association, condominium association or cooperative corporation shall continue to receive, to the extent necessary, financial assistance from the federal government during such continued exemption period, and (3) the governing body of the municipality in which the property is located approved the terms of such continued exemption, including any agreement for payments in lieu of taxes as authorized in this section; provided, however, that in lieu

of such taxes, the public body or resident management corporation, condominium association or cooperative corporation which owns or holds such property may agree to make payments to a political subdivision for the services, improvements or facilities furnished by it for the benefit of a housing project, but in no event shall such payments: either (1) exceed the amount last levied as the annual tax of such political subdivision upon the property included in said project prior to the time of its acquisition by the aforesaid public body or (2) be less than the amount last paid in lieu of taxes to the political subdivision, attributed to, or prorated for, the public housing project for which title is being transferred to the residents thereof or to a resident management association or cooperative corporation, by the public body by which title was transferred to private ownership pursuant to a program of home ownership opportunities as authorized in R.S.55:14A-19.

(cf: P.L.1991, c.225, s.2)

STATEMENT

P.L.1991,c.225, amending R.S.55:14A-20, was intended to permit a transitional period (not exceeding 15 years) of local property tax exemption to public housing project property when the project is involved in a federal-government program to enable the residents to acquire and manage the property. Under previous law, such property could not qualify for the exemption after title passed to the residents, although the federal government continues a measure of subsidy during the transitional period. The wording of the amendment, however, implied that the property would be eligible for the local tax exemption only so long as the federal subsidy remained no less than it was before the tenant-ownership program began. This bill makes it clear that the federal funding for such a project need only continue "to the extent necessary" to maintain the project's feasibility during the transition period.



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LEGISLATIVE REPORT

Happy New Year?

Where does the time go? It seems like just a few weeks ago that this report was heralding the start of the 204th Legislature. Now, we are looking at the

first activities of the 205th. Two years sure passed in a hurry.

As this column is being written, we are less than one week into the 205th Legislature's first session. This early it is difficult, at best, to say



what will face us in the coming months. Even the practice of pre-filing of bills does not shed much light as there are only about 1000 bill numbers assigned so far, of which 560 are pre-filed bills. Of these, only about 20 relate in some way to property taxation.

While we do not know what is ahead, we can look back at the last session with some degree of relief. Neither S-2734, the Stockman/Lynch bill to revise property tax administration system in New Jersey nor A-5046/S-3595, regarding personal versus real property, made it to the Governor's desk despite major efforts from those supporting these key bills.

In his letter thanking us for our support in opposition to A-5046/S-3595, Bill Dressel, Assistant Executive Director of the New Jersey State League of Municipalities says, in part, "Rest assured (but don't rest too long) that the proponents of this measure will again push for its passage . . ." Bill was right, Assemblyman Pascrell has already pre-filed A-411 as the 1992/1993 version of last year's A-5046. Also, Assemblyman Kamin has pre-filed A-237 to continue what the old A-1400 did not complete.

The avalanche of new legislation has not yet begun. On my last visit to the statehouse, the Bill Room was closed for the changeover. Each session

day holds the potential for new promises or problems. Your legislative committee will hang on tight as we ride the roller coaster of the legislative process.

BILL BIRCHALL & WALT KOSUL
Co-Chairmen

LOCAL PROPERTY TAX

Fox-Lance Law's Requirements for Property Tax Exemption Must be Strictly Complied With -

This case involves a claim of property tax exemption by Tru Urban Renewal Corp., under the Urban Renewal Corporation and Association Law of 1961 (Fox-Lance Law). The concerned building and property are adjacent to a building and property for which the plaintiff had followed all the statutorily required steps for tax exemption.

Those steps including obtaining advance approval for the specific development plan and for a financial agreement from the Newark City Council. The plaintiff did not follow those steps for an addition to the approved (and exempted) development.

Plaintiff argued that the construction of improvements completed in 1986, which were denied exemption by defendant's assessor, were contemplated by the site plan and storm drainage and utility plans submitted in connection with the approved project. Specifically, the plans showed an area identified as "Expansion Area."

The court disagreed, emphasizing that legislative exemption requirements must be strictly complied with. Newark had argued that the Tax Court did not have jurisdiction in the case, but the court also disagreed with that argument. The court explained that the exemption statute (N.J.S.A. 40:55-65) provides that Fox-Lance exemptions are claimed and allowed in the same manner as other real property tax exemptions. The court affirmed the denial of the exemption.

Tru Urban Renewal Corp. v. Newark - 11 N.J. Tax 63 (Tax Court, March 1990).

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LOCAL PROPERTY TAX

Property Containing Textile Plant Should Be Valued for Property Tax Purposes at Highest and Best Use—McGinley Mills, Inc. contests the local property tax assessment on its industrial property. Taxpayer has filed a direct complaint in the Tax Court under N.J.S.A. 54:3-21. Valuation and discrimination are in issue.

Taxpayer contends that the highest and best use of the property is for general industrial purposes. Therefore, the property must be valued as if vacant and offered for sale to a purchaser who would use it for industrial purposes other than textile manufacturing. Taxing district's expert states that the highest and best use of the property is its current use for textile manufacturing purposes. The most likely purchaser for this highest and best use is a textile manufacturer who can take advantage of the plant as currently outfitted.

Taxpayer argues that real property improvements installed for the textile manufacturing operation would be useless to a prospective purchaser who intended to use the property for general industrial purposes. Therefore, the improvements are valueless.

Thus, the issue is posed: Should the textile manufacturing real property improvements in existence and in use on the assessing date be valued and assessed? Or should these improvements be assumed to be valueless because a prospective purchaser who is not in the textile business would have no use for them?

The Tax Court held that property containing a textile manufacturing plant had to be valued at its highest and best use as a textile manufacturing plant for property tax purposes. Purchaser who would buy property for different use, such as a warehouse, would not be able to take advantage of the real

property in its current configuration. Therefore, the purchaser would not pay a price equal to its highest current value.

The court also held that the value of property could be determined for property tax purposes by use of the cost approach at \$1,624,845. The taxing district expert's cost of \$3,402,488 was accepted. A five percent entrepreneurial profit was added, the effective age was determined at 18 years, and physical depreciation of 35 percent and function depreciation of 25 percent were accepted.

Judging by the front pages these days, the person who wishes you all the happiness in the world isn't being too generous.

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LOCAL PROPERTY TAX

Urban Renewal Law and Tax Abatement Law Require Execution of Appropriate Agreement - Substantially for reasons expressed in the Tax Court opinion reported at 9 N.J. Tax 490 (1988), the Appellate Division concluded that Judge Lario correctly held that 1) both the Urban Renewal Law (N.J.S.A. 40:55C-40 *et seq.*) and the Tax Abatement Law (N.J.S.A. 54:4-3.95 *et seq.*) require "the acceptance and execution of appropriate agreements as precondition for an eligible project to receive tax abatement" and 2) that "there exists no equitable reason to waive the statutory prerequisites." (**B.P.U.M. Dev. & Urb. Renewal v. Camden** - 11 N.J. Tax 95 (App. Div., 1989).

LOCAL PROPERTY TAX

Due Process Requires That Tax Assessor Comply with Notice Requirements - This was an appeal of the Tax Court decision, **City of Camden v. Camden Masonic Assn.**, 9 N.J. Tax 331 (1987). The tax assessor calculated from the subject building's vandalized condition that it was not being used and

could not be used within the immediate future. In addition, the property probably had not been used on the assessment dates for the past two years for which an exemption had previously been granted.

The tax assessor then assessed the property regularly without tax exemption and instituted proceedings to impose omitted assessments for those years. The Tax Court had found that assessments were rendered invalid by the failure of the assessor 1) to comply with the notice requirements of the alternate method for omitted assessments and 2) with due process requirements that the property owner be given a chance to contest omitted assessments.

The Tax Court had explained that the requirements of due process are not met unless the opportunity to be heard is afforded the taxpayer at some point in the proceedings before the tax becomes irrevocably final.

The Appellate Division affirmed the Tax Court decision for substantially the same reasons.

City of Camden v. Camden Masonic Assn. - 11 N.J. Tax 89 (App. Div., 1989).

P.L.1991, CHAPTER 363
approved January 9, 1992
1990 Assembly No. 3319

AN ACT concerning county tax administrators and amending R.S.54:3-7 and R.S.54:3-9.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. R.S.54:3-7 is amended to read as follows:

54:3-7. a. Each county board shall appoint a county tax administrator, who shall hold office for a term of three years, and who shall, subject to personnel policies adopted by the governing body of the county, appoint such clerical assistants as may be necessary.

b. After the effective date of this 1979 amendatory and supplementary act, P.L.1979, c.499, any person holding the office of county tax administrator shall devote full time to his duties; provided, however, that any person currently holding office as a county board secretary may, at the option of the appointing authority continue to serve on a part-time basis; provided he holds or obtains prior to July 1, 1981 a tax assessor certificate.

c. After the effective date of this 1979 amendatory and supplementary act, P.L.1979, c.499, no person shall be newly appointed as county tax administrator unless he shall hold a tax assessor certificate issued by the Director of Taxation pursuant to P.L.1967, c.44 (C.54:1-35.25 et seq.). No person shall be appointed to a first term as a county tax administrator after the effective date of this 1988 amendatory and supplementary act, P.L. 1988, c.96 unless the person has had four years experience in property tax administration at the State, county or municipal level. In the first 24 months of his appointment, the appointee shall successfully complete a training program developed for tax administrators and offered by the Director of the Bureau of Government Research at Rutgers, The State University, except that, during the six month period provided for the development and approval of the tax administrator's program pursuant to this 1988 amendatory and supplementary act, a person with the requisite qualification and experience in property tax administration may be temporarily appointed county tax administrator for a period not to exceed one year.

d. If any county board secretary required to hold or obtain a tax assessor's certificate pursuant to subsection b. of this section does not submit proof thereof prior to the required date, the county tax board shall immediately declare the position vacant and notify the county governing body and the Director of Taxation of the existence of such vacancy. The county tax board shall then appoint a

county tax administrator subject to the provisions of subsection c. of this section.

2. R.S.54:3-9 is amended to read as follows:

54:3-9. Each county tax administrator hereafter appointed who shall have received two consecutive appointments for full terms as county tax administrator, and each county tax administrator serving a full term as secretary on the effective date of this amendatory and supplementary act who shall thereafter be appointed to another consecutive full term as county tax administrator, and each county tax administrator who has heretofore acquired tenure as secretary pursuant to this section shall hold office as county tax administrator during good behavior and efficiency and shall not be removed for political reasons or for any cause other than incapacity, misconduct, or disobedience of just rules or regulations established by the Director of the Division of Taxation.

For the purposes of this section any person holding the position of county board secretary on the effective date hereof shall be considered to be serving a full term as secretary if he was appointed to serve a full term of 3 years or 5 years, as the case may be, or to serve more than 2 years of an unexpired term.

(cf: P.L.1979, c.499, s.6.)

STATEMENT

This bill clarifies the qualifications that must be met by a person granted first-term appointment as a county tax administrator, by requiring that within the first 24 months of his appointment such a person complete the training program developed for tax administrators and offered by the Director of the Bureau of Government Research at Rutgers, the State University. Under current law, such a person must have completed the course prior to his appointment as a county tax administrator.

The bill also removes the residency requirement from the requirements of tenure of office of a county tax administrator.

P.L.1991, CHAPTER 389
approved January 16, 1992

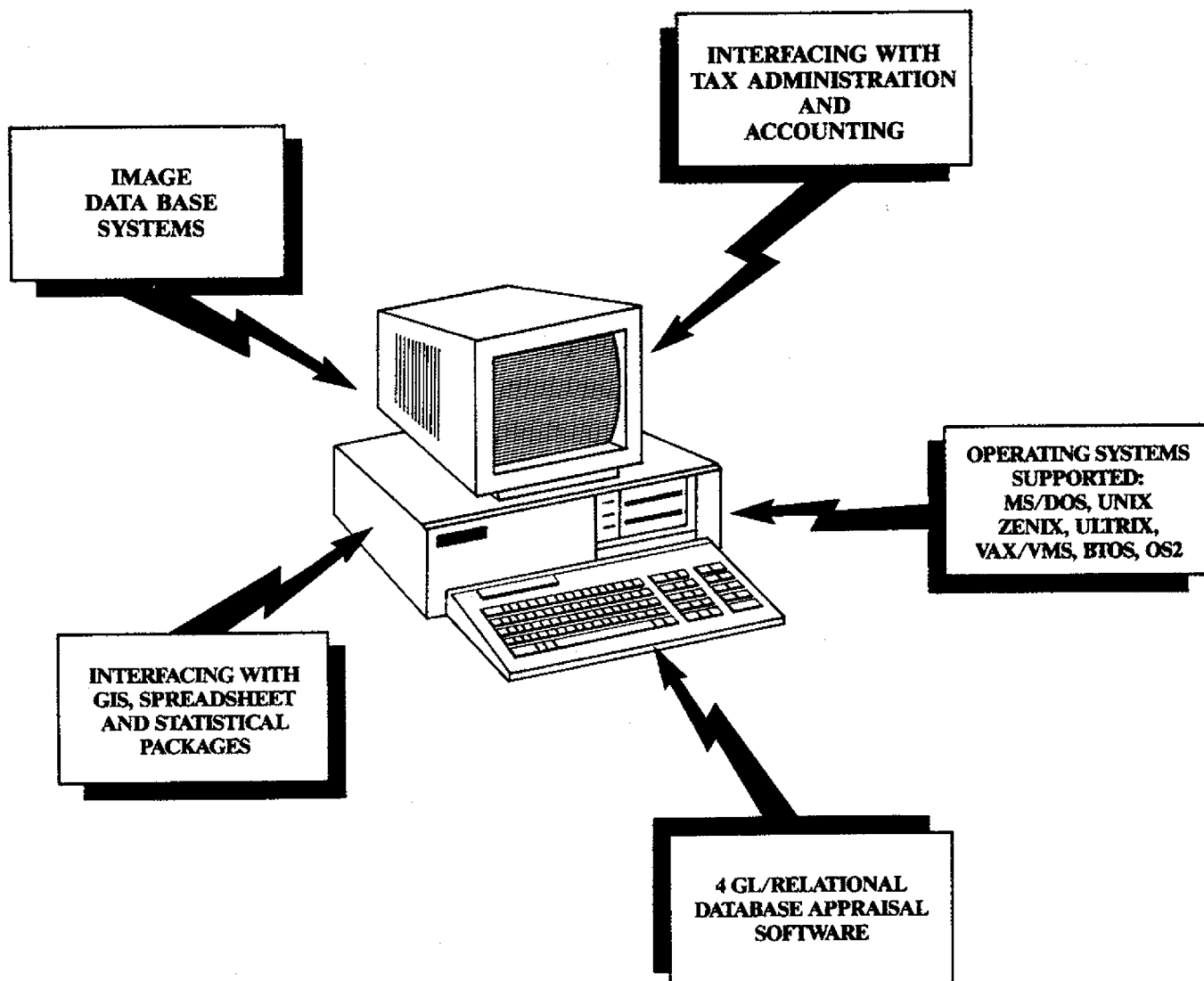
1990 Assembly No. 1335 (First Reprint)

AN ACT changing the definition of veteran to include certain members of the American Merchant Marine and amending various parts of the statutory law.

VETERANS

Changes definition of veteran to include members of the American Merchant Marine during World War II who are declared by the U.S. Department of Defense to be eligible for federal veterans' benefits.

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SENATE, No. 3690

AN ACT concerning taxes otherwise due in the sixth and subsequent years for certain residential structures granted a five-year tax abatement and amending P.L.1989, c.207.

Section 7 of P.L.1989, c.207 (C.54:4-3.145) is amended to read as follows:

a. Each approved abatement shall be evidenced by a financial agreement between the qualified municipality and the applicant. The agreement shall be prepared by the applicant and shall contain the representations that are required by the enabling ordinance. The agreement shall provide for the applicant to annually pay to the municipality an amount in lieu of real property taxes, to be computed according to either subsection b. or c. of this section, as provided for in the enabling ordinance.

b. Payments in lieu of taxes may be computed as two percent of the cost of the improvements or conversion alterations, as appropriate for five years following such completion and in the sixth and all subsequent tax years following completion, 100% of the equalized taxes otherwise due; or

c. Payments in lieu of taxes may be computed as a portion of the real property taxes otherwise due, according to the following schedule:

(1) In the first tax year following completion, no payment in lieu of taxes otherwise due;

(2) In the second tax year following completion, an amount not less than 20% of taxes otherwise due;

(3) In the third tax year following completion, an amount not less than 40% of taxes otherwise due;

(4) In the fourth tax year following completion, an amount not less than 60% of taxes otherwise due;

(5) In the fifth tax year following completion, an amount not less than 80% of taxes otherwise due;

(6) In the sixth and all subsequent tax years following completion, 100% of the equalized taxes otherwise due.

d. For the purposes of this section, the amount of "taxes otherwise due" (not to be confused with "equalized taxes otherwise due") shall be determined by including the appropriate percentage of the assessed valuation of the abated structure, improvement or conversion alteration, as the case may be, on the assessment list of the municipality as taxable property, and levying taxes thereon in the same manner as other taxes are levied pursuant to chapter 4 of Title 54 of the Revised Statutes; provided, however, that no value for a property subject to the provisions of this act shall be included in the calculation of the "net valuation on which county taxes are apportioned" until the first tax

year for which a municipal-wide revaluation is implemented.

(cf: P.L.1989, c.207, s.7)

3. This act shall take effect immediately and shall apply to any five year tax abatement agreement entered into under P.L.1989, c.207 (C.54:4-3.139 et seq.).

LOCAL TAXATION

Provides uniform tax treatment in sixth and subsequent years for certain residential structures previously granted five-year tax abatement.

SENATE, No. 1808**CHAPTER 439**

APPROVED 1/18/92

By Senator BENNETT

AN ACT concerning notice requirements for the filing of complaints for rollback tax assessments and amending P.L.1947 c.413.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 2 of P.L.1947 c.413 (C.54:4-63.13) is amended to read as follows:

2. On the written complaint of the tax assessor, the collector of taxes, or any taxpayer, of the taxing district, or of the governing body thereof, or upon a resolution by the county board of taxation, of its own motion, the county board of taxation shall hear the matter. Any such complaint or motion shall specify the property alleged to have been omitted and the particular year of the assessment. At least 15 days' notice in writing shall be given to the owner of the property of the time and place of the hearing and the notice shall specify the property alleged to have been omitted and the particular year of the assessment. The notice may be served by [registered] certified mail. The collector shall present such complaints and serve such notices as the governing body may direct and shall attend before the county board of taxation and subpoena proper witnesses and pay their fees. He shall receive reimbursement therefor and two dollars (\$2.00) for every day he shall attend for his services from the taxing district. When the tax assessor files a complaint, the tax board shall send a notice of the complaint to the tax collector.

(cf: P.L.1947 c.413, s.2)

LOCAL TAXATION

Permits assessors to file complaints concerning rollback tax assessments, allows certified mail service and increases minimum notice time.

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LOCAL PROPERTY TAX

Collateral Estoppel Requires Tax Court to Accept Assessment Accepted in Past Litigation, But Does Not Prevent Court from Independent Assessment—In question were three years of assessments for 1976, 1979 and 1981 for three different lots abutting a quarry. The assessor used a "market approach" to value. The Tax Court affirmed the 1976 and 1979 assessments, but the 1981 assessment was not heard because neither side was ready.

When the 1981 appeal was finally heard, the Tax Court concluded that the assessment used in their prior hearing was not determinative because the assessor had failed to fully adjust for all adverse market factors. The court also lowered by 25 percent the assessment because of the three lots' proximity to a quarry.

The Appellate Division, Superior Court, ruled that the Tax Court had erred in not accepting prior judgement of the court on the same issue. The Appellate Court also held, though, that the Tax Court did not act improperly in reaching its own conclusion that there should be a 25 percent deduction from value due to the adverse effect of close proximity to the quarry.

Warren Twp. v. Suffness—225 N.J. Super. 399 (App. Div., June 6, 1988).

It's been said that when the first jigsaw puzzle was invented, the whole country went to pieces.

He's such a poor driver, the police gave him a season ticket.

P.L.1991, CHAPTER 390

approved January 16, 1992

1990 Assembly No. 1423 and 1849

AN ACT conforming the dates of World War II, the Korean Conflict and Vietnam era as found in the laws of this State to the dates as found in federal law, providing for the extension of eligibility for certain benefits to veterans of certain peacekeeping operations of the Armed Forces of the United States and amending and supplementing various parts of the statutory law.

VETERANS

Extends service dates of World War II, and the Korean and Vietnam conflicts to include the dates in federal law, extends benefits to veterans of Lebanon, Grenada and Panama peace-keeping missions.

P.L.1991, CHAPTER 408

approved January 17, 1992

1991 Senate No. 3438

AN ACT concerning certain real estate appraisers and amending P.L.1991, C.68

STATEMENT

This bill makes modifications in the law which was recently enacted to provide for the voluntary licensing and certification of real estate appraisers by the State Real Estate Appraiser Board. The bill provides for two types of certified real estate appraisers, general and residential. It also allows the board more flexibility in establishing standards for licensing of real estate appraisers but limits the flexibility by requiring that the standards established by the board must be acceptable to the Appraisal Subcommittee which oversees such requirements..

LOCAL PROPERTY TAX

Taxing District Failed to Establish Change in Value to Prevent Application of Freeze Act -

Taxpayers moved for application of the Freeze Act (N.J.S.A. 54:51-8) to judgements entered by the Tax Court for 1987 on three upper-level parcels of the Headquarters Plaza in Morristown, Lots 1.04, 1.05 and 1.06 in Block 4901. Motions on Lots 1.04 and 1.05 seek application of the Freeze Act for 1988, and the motion on the third lot seeks Freeze Act application for both 1988 and 1989.

In an earlier lawsuit, taxpayers had filed complaints on August 14, 1987, contesting the 1987 assessments on the five upper-level parcels of the project. On September 19, 1987, the developer and the taxing district settled, agreeing to amend the 1979 tax abatement agreement to including the upper-level parcels effective for the tax year 1988. The 1987 settlement agreement is silent concerning the application of the Freeze Act for 1988 or 1989.

In 1987, a November 1979 tax abatement agreement between Morristown and the developers of the Headquarters Plazas project was amended to grant tax exemption to five upper-level parcels in exchange for payments of \$1.5-million per year in lieu of taxes. The amendments was challenged by Morris Township. As part of its challenge, Morris Township successfully contested the tax exemption granted the five parcels for 1988.

In July 1989, taxpayers moved for application of the Freeze Act to the 1988 assessments on Lots 1.04 and 1.05 and to the 1988 and 1989 assessments on Lots 1.06, 1.07 and 1.08. No Freeze Act motions were made for Lots 1.01 and 1.03. The taxing district opposed the motions on the ground that application of the Freeze Act would be inconsistent with the 1987 settlement and also because it alleged there had been a change in the value of Lots 1.06, 1.07 and 1.08.

The taxing district's counsel sought to avoid application of the Freeze Act for 1988 and 1989 for Lots 1.06, 1.07 and 1.08, contending that there was a change in value between the October 1, 1986, assessing date for 1987 and the assessing dates for 1988 and 1989.

Thus, the first issue was whether a change in value occurred between October 1, 1986, and the assessing dates for the 1988 and 1989 tax years that would prevent application of the Freeze Act for those years. The court acknowledged that there was evidence of some physical changes in the properties, but not enough to show a change in value. The court

also pointed out that the settlement of the 1987 cases included the agreement that no added assessments would be imposed for that year. This appeared to be tacit acknowledgement by the parties that the physical changes occurring in 1987 did not add to the value of the property as assessed as of October 12, 1986. Accordingly, the court held that the taxing district failed to establish that the Freeze Act should not apply for 1988 or 1989 because of a change in value.

The taxpayers also sought to apply the Freeze Act to three parcels of the five-parcel settlement while reserving their right to seek a further reduction in the assessments on two of the five parcels. The taxing district contended that the taxpayers may not pick and choose among the five parcels, seeking Freeze Act treatment for some and reserving the right to contest the others.

In rejecting this contention, the court stated that each of the taxpayers had the right to decide whether to apply the Freeze Act, or only seek a further reduction.

The Tax Court Clerk was directed to enter judgements applying the Freeze Act to Lot 1.04 for 1988 and Lots 1.06, 1.07 and 1.08 for 1988 and 1989. The valuation issue for Lots 1.01 and 1.03 for 1988 and 1989 and for Lots 1.04 and 1.05 for 1989 was to be determined in a future trial.

2nd Roc-Jersey Assoc. v. Morristown - 11 N.J. Tax 45 (Tax Court, February 1990).

LOCAL PROPERTY TAX

Resting or Rehabilitating Race Horses Is Not an Agricultural Use as Required for Farmland Assessment - This is an appeal of a Tax Court decision that affirmed a denial of farmland assessment for part of Miele's property, but reversed a rollback of farmland assessment for the other part of their property.

On appeal to the Appellate Division, the taxpayer argued that the trial judge committed legal error when he found that resting or rehabilitating race horses between races or if they are injured is not an agricultural use for which farmland assessment can be granted. The Appellate Division rejected the taxpayer's argument and affirmed for substantially the reasons cited in the Tax Court opinion.

Miele v. Jackson Twp. - 11 N.J. Tax 97 (App.Div., July 1989)

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P.L.1991, CHAPTER 439 approved January 18, 1992 1990 Senate No. 1808

AN ACT concerning notice requirements for the filing of complaints for the rollback tax assessments and amending P.L.1947, c.413

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 2 of P.L.1947, c.413 (C.54:4-63.13) is amended to read as follows:

2. On the written complaint of the tax assessor, the collector of taxes, or any taxpayer, of the taxing district, or of the governing body thereof, or upon a resolution of the county board of taxation, of its own motion, the county board of taxation shall hear the matter. Any such complaint or motion shall specify the property alleged to have been omitted and the particular year of the assessment. At least 15 days notice in writing shall be given to the owner

of the property of the time and place of the hearing and the notice shall specify the property alleged to have been omitted and the particular year of the assessment. The notice may be served by certified mail. The collector shall present such complaints and serve such notices as the governing body may direct and shall attend before the county board of taxation and subpoena proper witnesses and pay their fees. He shall receive reimbursement therefor and two dollars (\$2.00) for every day he shall attend for his services from the taxing district. When the tax assessor files a complaint, the tax board shall send a notice of the complaint to the tax collector.

(cf: P.L.1947, c.413, s.2)

2. This act shall take effect immediately.

LOCAL TAXATION

Permits assessors to file complaints concerning rollback tax assessments, allows certified mail service and increases minimum notice time.

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