

TAX APPEALS

1101. The Right of Appeal

1101.1 Every taxpayer and every taxing district has the right to appeal a tax assessment, first through administrative channels and if not satisfied with the results there, ultimately through the courts. EXHIBIT XI-1 shows the course of a tax appeal which is carried to the full extent of the appeal process. Normally, an appellant must exhaust his administrative remedies before requesting judicial review. In other words, the courts will not permit an appellant to by-pass any steps in the appeal process, such as filing with the Superior Court without first bringing his appeal before the county board of taxation and the Tax Court. In unusual cases, the courts have relaxed this rule. An appeal may stop at any level in the process, if both parties are satisfied with the judgment, or if the loser does not wish to carry the appeal to a higher appellate agency.

REFERENCES:

N.J.S.A. 54:3-21.

Switz v. Middletown Tp., 40 N.J.Super, 217, 122 A.2d 649; modified on appeal, 23 N.J. 580 (1957).

Pleasantville Taxpayers v. City of Pleasantville, 115 N.J.Super, 85 (App.Div.1971); cert.denied 59 N.J. 268 (1971).

County of Bergen v. Paramus 79 N.J. 302 (1978).

1101.2 Types of tax appeals. There are a number of different types of tax appeals listed below. This chapter deals primarily with appeals of regular assessments. Other types of appeals, such as those of added or omitted assessments and appeals of equalization tables, are discussed at greater length in the chapters dealing with the forms of assessment or equalization table involved.

REFERENCES:

Handbook, sec. 701.8, 702.9, 1004.1 to 1004.3.

1101.21 Appeals of regular assessments. Any taxpayer may file a tax appeal:

- (1) if he is aggrieved by the assessment on his own property, or by the denial of his application for a homestead tax rebate, a veteran, widow of a veteran, a SeDiSu* property tax deduction or any property tax exemption, or
- (2) if he believes that he is discriminated against by the assessment on any other property or properties in the same county.

Any taxing district may file a tax appeal:

- (1) if it believes that it is discriminated against by the assessment of any property within the taxing district, or
- (2) if it believes that it is discriminated against by an assessment in any other taxing district in the county.

REFERENCES:

N.J.S.A. 54:3-21, 54:4-3.89a, 54:4-8.21, 54:4-8.49.

1101.22 Appeals of added assessments. Taxpayers and taxing districts may file appeals from added assessments. Except for the dates of filing, the procedures are the same as for regular assessment of real property.

REFERENCES:

N.J.S.A. 54:4-63.11.
Handbook, sec. 701.8.

1101.23 Appeals of omitted assessments. Taxpayers and taxing districts may file appeals from the judgments of the county board of taxation on omitted assessments with the Tax Court. Except for the dates of filing, the procedures are generally the same as for other appeals to the Tax Court.

REFERENCES:

N.J.S.A. 54:4-63.23.
Handbook, sec. 702.9, 1104.1 to 1104.7.

1101.24 Appeals of the county equalization table. Taxpayers and taxing districts may file appeals from the county equalization table with the Tax Court (see paragraph 1104.22).

REFERENCES:

N.J.S.A. 54:2-37.
Handbook, sec. 1004.3.

1101.25 Appeals of the Table of Equalized Valuations. A taxing district may file an appeal from the Director's Table of Equalized Valuations with the Tax Court (see paragraph 1104.22).

REFERENCES:

N.J.S.A. 54:1-35.4.
Handbook, sec. 1004.2.

1102. The Assessor as an Appeal Agency

- 1102.1 The municipal assessor may be considered to be an informal appeal agency. Many county boards of taxation urge taxpayers to consult with their assessor before filing a formal petition of appeal. While the assessor may not on his own make changes in assessments shown on the Tax List once he has filed the list with the county board of taxation, nevertheless he may make an offer of stipulation to the taxpayer if both he and the taxpayer reach an agreement different from the assessment as shown on the Tax List (see par. 1103.25).
- 1102.2 Informal review before the Tax List is filed. On or before December 31 of the pretax year (ten days before filing the complete tax list and duplicate), the assessor is required to give notice by advertisement when and where any taxpayer may inspect his assessment for the coming year. If a taxpayer at this time convinces the assessor that the Tax List is in error, a correction can be made before the list is filed with the county board of taxation on January 10

of the tax year. This will eliminate the need for the filing of any formal tax appeal, and will save both the taxpayer and the assessor considerable time and effort later in the year. The assessor should regard this period of taxpayer review as an opportunity to eliminate errors and to promote good public relations, rather than a burden which must be endured.

REFERENCES:

N.J.S.A. 54:4-38.

1102.3 Appeals after the Tax List has been filed. After the Tax List and Duplicate have been filed on or before January 10 with the county board of taxation, the assessor no longer has the authority to make changes in the Tax List. The assessor, however, may informally apply to the county board of taxation any time prior to formal certification of the Tax List by the board in order to request a change in the assessed valuation of property. The county board of taxation in accordance with its authority under the law may make changes in the Tax List as it deems appropriate, prior to its certification. A typical form for this purpose is shown as EXHIBIT XI-2. If an error is discovered after certification of the Tax List by the county board of taxation, many county boards of taxation require the filing of a formal tax appeal to carry out correction of the error.

The assessor should encourage taxpayers who are not satisfied with their assessments to discuss the matter informally. In numerous cases, the method of arriving at the assessment can be explained satisfactorily. It always is possible that an error has been made. Many potential tax appeals can be settled through informal consultation with offer of and entry into a stipulation

where warranted (see par. 1103.25), without bringing them to a formal hearing before the county board of taxation.

REFERENCES:

N.J.S.A. 54:4-55.

Handbook, sec. 1103.2.

Local Property Tax Bureau News, June-July, 1959, p.1.

1102.4 Appeal forms. No formal application form is prescribed by law for use by taxpayers who wish to appeal to the assessor for a change in their assessments. However, some assessors have developed their own forms which have proven useful for this purpose. The use of such a local appeal form is helpful in gathering all of the information useful in reviewing the assessment, and it provides a standardized record for later reference. An example of a local appeal form is shown as EXHIBIT XI-3.

1103. The County Board of Taxation

1103.1 A county board of taxation, established in each county by State law, has as one of its principal duties the hearing of tax appeals.

REFERENCES:

Handbook, sec. 105.1 to 105.8.

1103.2 Petition of appeal. Appeals by taxpayers or taxing districts to the county board of taxation must be filed by August 15 of the tax year on petition forms supplied by the county board, and in accordance with rules of procedure adopted by each board. If the assessed valuation of the property being appealed exceeds \$750,000 the taxpayer or taxing district may file a petition of appeal directly with the Tax Court. An appeal of this type must also be filed by August 15 of the year in question.

REFERENCES:

N.J.S.A. 54:3-21.

1103.21 Filing the petition. The word "filed" has been interpreted by the courts to mean received in the office of the board by August 15; postmark of a mailed petition is not considered sufficient. Individual petitions of appeal must be filed for each assessed property. A copy of each petition must also be filed with the clerk of the taxing district, who is then required to notify the assessor, collector and such other municipal officials as the governing body shall direct, of the contents of the petition of appeal. Proof of service upon the municipal clerk must be verified by an affidavit of the taxpayer or his representative. The assessor should make sure that the clerk informs him at once of any petitions which are filed with him. If the taxpayer is a corporation, the petition of appeal must be prepared and filed by a New Jersey attorney-at-law. Time for filing a tax appeal may be extended by the county board of taxation upon written application to them from the taxpayer and with approval by the Director of the Division of Taxation in cases where a taxing district fails for any reason to mail or deliver a tax bill to a taxpayer before July 15. Any such extensions may not be for more than 30 days beyond the August 15 normal deadline date.

REFERENCES:

N.J.S.A. 54:2-40, 54:3-21, 54:3-21.4, 54:3-21.5.

Stack v. P.G. Garage, Inc., 7 N.J.Super. 63 (App.Div.1958); 144 A.2d 801.
Hackensack v. Rubenstein, 37 N.J. 39 (1962).

Danis v. Middlesex County Board of Taxation, 113 N.J.Super. 6
(App.Div. 1971).

Brott Realty, Inc. v. Monmouth County Board of Taxation, Superior Court,
App.Div., 1972 (unreported).

1103.22 The petition of appeal form. A standard format for the petition of appeal has been approved by the Director of the Division of Taxation. The petition of appeal form together with instructions is shown as EXHIBIT XI-4.

Where an appeal involves more than one property, separate petitions of appeal must be filed for each property separately assessed, unless the county board of taxation rules otherwise, and a separate filing fee must be paid for each property appealed. In the case of a petition of appeal filed against the assessment of a commercial, an industrial or multi-unit dwelling (more than 4-family), an itemized statement must be included with the petition of appeal showing all sources of income and all expenses for the property for the most recently completed accounting year and for any additional tax years which the county board of taxation may request.

REFERENCES:

N.J.S.A. 54:4-34.

Rules For County Boards Of Taxation, N.J.A.C. 18:12A-1.7(d);
18:12A-1.8.

1103.23 Filing fees. Upon filing a petition of appeal by a taxpayer with the county board of taxation the petition must be accompanied by a fee. The amount of fee to be charged depends upon the valuation of the property involved. The following schedule sets forth the amount of fee to be charged:

Less than \$150,000.00	\$ 5.00
\$150,000.00 or more but less than \$500,000.00	\$ 25.00
\$500,000.00 or more but less than \$1,000,000.00	\$100.00
\$1,000,000.00 or more	\$150.00

(1) When an appeal involves only the classification of property, a fee of \$25.00 is charged for each parcel of property for which reclassification is sought.

(2) When an appeal involves both the assessed valuation of property and the classification of property, the schedule of fees above shall apply in ac-

cordance with the assessed valuation of the property and further fee of \$25.00 shall be charged.

(3) When an appeal involves a matter other than the assessed valuation or classification of a property, or a combination of these two, a fee of \$25.00 is to be charged.

(4) The filing fee to be charged for added assessment appeals is to be based upon the apportioned valuation indicated on the added assessment list as the prorated assessment.

(5) No filing fee is to be charged in cases involving appeal from a denial of an application for a veteran's deduction, a veteran's widow's deduction, a SeDiSu* property tax deduction, an exemption for a disabled veteran or a widow of a disabled veteran or a denial by the tax assessor of a homestead tax rebate.

(6) Where permission has been granted by the county board of taxation for the filing of one petition of appeal involving more than one property, the filing fee payable is to be an amount equal to the amount that would have been payable had individual petitions of appeal been filed separately for each parcel of property.

The county tax administrator is responsible for all fees paid and is to transmit all fees received to the county treasurer.

The fees shown above were fixed by law and were effective beginning in 1980 (Chapter 499, Laws of 1979). All fees which were established at that time are to be used exclusively to modernize record retention capabilities of the county board of taxation, for any costs incurred by the board in recording and transcribing appeal proceedings, setting forth memorandums of judg-

ment and copies, and for paying by the county of any salary which is required to be increased by Chapter 499, Laws of 1979.

REFERENCES:

N.J.S.A. 54:3-21.3, 54:3-21.3a.

Rules For County Boards of Taxation, N.J.A.C. 18:12A-1.7.

1103.24 Discrimination appeals. A taxpayer who alleges he has been discriminated against in his assessment, and uses comparable sales of other properties as comparisons to prove his point may affix a schedule to the petition of appeal and to the copy, giving the block and lot number, the assessed valuation as shown in the current tax list and the sale price of each comparable property cited. The fact that it is a discrimination appeal also must be indicated in the petition of appeal or on a rider attached to the petition.

REFERENCES:

In re Appeals of Kents, Inc., 34 N.J. 21 (1961).

Handbook, par. 1106.1, 1107.1.

Rules For County Boards Of Taxation, N.J.A.C. 18:12A-1.6(d).

Borough of Matawan v. Tree Haven Apartments Inc., 108 N.J. Super.

111 (App.Div.1969).

Anaconda Co. v. City of Perth Amboy 157 App.Div. 42 (1978).

1103.25 Settlement stipulations. At any time after a tax appeal is filed with the county board of taxation and before judgment is rendered, if the appellant and the municipality reach an understanding as to the proper assessment on the property, they may sign a settlement stipulation. Agreements of stipulation must be signed by the municipal attorney. The assessor is not permitted on his own authority to affix his signature to a stipulation of settlement of a tax appeal. The stipulation certifies to the county board of taxation the proper amount of the assessment and provides a means for avoiding the formalities of a regular hearing and judgment by the county board. No standardized stipulation form is prescribed for all counties. An example of a form used in one

county is shown as EXHIBIT XI-5. Any settlement agreed upon between the parties is required to be in writing and signed by the parties involved or their attorneys. The proposed settlement or stipulation must include the basis for the settlement and is to be submitted to the county board of taxation for its approval. The board, in its discretion, may require the parties (appellant or taxing district) to the stipulation or their attorneys to appear before the board. If the county board of taxation approves the stipulation, a judgment will be issued in accordance with the terms agreed upon. However, if the county board of taxation disapproves the stipulation, the parties must be notified of the disapproval and advised of a new hearing date for the appeal.

REFERENCES:

Rules For County Boards Of Taxation, N.J.A.C. 18:12A-1.9(i).

1103.26 Discontinuance of appeal. An appellant may withdraw his appeal at any time before a judgment is rendered by the county board of taxation. No standardized withdrawal form is prescribed for all counties. A sample form used in one county is shown as EXHIBIT XI-6.

1103.3 Notice of hearing. Upon receipt of a petition of appeal, the county board of taxation must give at least 10 days notice to both the appellant and the taxing district regarding the time and place of the hearing. Notification by mail is considered sufficient. Some county boards maintain a practice of notifying taxing districts immediately after the August 15 deadline of all appeals filed for their taxing districts. This procedure allows the taxing district sufficient time to obtain copies of petitions and prepare a proper defense.

REFERENCES:

N.J.S.A. 54:3-21, 54:3-22.

Jersey City v. Division of Tax Appeals in the State Department of Taxation and Finance, 5 N.J.Super. 375 (1949); 69 A.2d 331, affirmed 5 N.J. 433

(1950); 75 A.2d 865.

Local Property Tax Bureau News, June-July, 1959, p.1.

Rules For County Boards Of Taxation, N.J.A.C. 18:12A-1.9(b).

1103.4 Hearing. The procedures to be followed at the hearing are set forth in Rules For County Boards of Taxation adopted by the Director of the Division of Taxation and applied by each county board of taxation. The board has the right to compel the attendance of witnesses, to require books and records to be produced, and to examine witnesses under oath. An individual may be subject to contempt proceedings in the event he fails to comply with county board directives. An individual making a false statement under oath before the board may be guilty of perjury.

REFERENCES:

N.J.S.A. 54:3-22 to 54:3-25.

Rules For County Boards Of Taxation, N.J.A.C. 18:12A-1.9, 18:12A-1.10.

1103.41 Payment of taxes pending appeal. A taxpayer who files an appeal from his property tax assessment is required to pay to the tax collector of the taxing district at least the first three quarters of the taxes assessed against him for the current tax year. If at the time of the hearing the first three quarters of the taxes for the current tax year have not been paid, the taxing district may move before the county board of taxation for a dismissal of the appeal. The tax payment requirement does not apply in cases involving appeals where statutory qualification for exemption is the subject of appeal, for Farmland Qualified (3B), and other exemptions designated as Class 15D, E and F (see N.J.S.A. 54:4-52).

REFERENCES:

N.J.S.A. 54:3-27.3, 54:4-52, 54:4-66.

Rules For County Boards Of Taxation, N.J.A.C. 18:12A-1.6(d).

Sidney Glaser, Director, Division of Taxation, Memorandum To All County Boards of Taxation, August 30, 1978.

LeCross Associates v. City Partners, 168 N.J.Super 96 (App.Div. 1979), certif. den. 81 N.J. 294 (1979).

1103.42 Representation before Board. A taxpayer may represent himself at the hearing; if he does not represent himself, he must be represented by a member of the bar of the State of New Jersey. This requirement may be waived by the county board of taxation in cases of extreme hardship such as old age, illiteracy and the like. If the taxpayer is a corporation, it must be represented by an attorney-at-law of New Jersey, unless an attorney from some other state is permitted by the board to appear. The assessor of the taxing district involved is required to attend any hearing together with counsel for the taxing district, unless the county board of taxation rules otherwise. No assessor is permitted to appear before a county board of taxation as an expert witness against another assessor or taxing district except to defend an assessment of his own taxing district.

REFERENCES:

Stack v. P.G. Garage, Inc., 7 N.J. 118 (1951); Attorney General to all county boards of taxation, May 17, 1951.
Rules For County Boards Of Taxation, N.J.A.C. 18:12A-1.9(d), 18:12A-1.9(f), 18:12A-1.9(l).

1103.43 Burden of proof. The courts have held that in appeal proceedings before a county board of taxation the assessment must be presumed valid (see paragraphs 501.26 and 1104.44), and the burden of proving it to the contrary falls on the appellant. In the absence of at least some evidence to the contrary, the board may dismiss the appeal. Cases of nonappearance at the hearing by the taxpayer may also result in dismissal of the appeal by the county board of taxation. The fact that the burden of proof rests upon the appellant, however, does not release the taxing district from the responsibility of preparing a good defense of the assessment. The assessor or a representative of the taxing district should be prepared to justify the assessment as though the burden of proof

were placed upon the municipality by law. If the appellant presents sufficient evidence to overcome the burden, the taxing district must rebut such evidence through competent proofs. In cases where the assessed valuation has been determined by the capitalization of income approach to value, the taxing district is required to produce at the hearing a copy of the property record card for the property under appeal, showing the computation of value based on the capitalization of income. If an appellant relies on expert testimony in attempting to prosecute his appeal, three copies of the appraisal must be filed with the county board of taxation and one copy served upon the taxing district at least one week prior to the hearing. The appellant has the right to inspect the property record card of the property under appeal at least one week prior to the hearing. The county board of taxation may, however, waive the requirement of a written appraisal. No person is authorized to testify at a hearing concerning a property tax assessment unless that person has inspected the property under appeal.

REFERENCES:

City of Passaic v. Gera Mills, 55 N.J.Super. 73 (1959); 150 A.2d 67.
Texas Eastern Transmission Corp. v. Borough of Carteret, 116 N.J.Super.
9 (App.Div.1970); affirmed 58 N.J. 585 (1971).
Rules For County Board Of Taxation, N.J.A.C 18:12A-1.9(e),
18:12A-1.9(g), 18:12A-1.9(h), 18:12A-1.9(k).

1103.44 Completion of hearings. All tax assessment appeal hearings before the county board of taxation must be completed by November 15 of the tax year. However, in the event the board is unable to hear and determine any appeals by November 15, the board may apply to the Superior Court for an order to extend the time for hearing and determining the appeals. The court may grant an extension of time where it is shown by the county board of

taxation that the number of appeals before it is disproportionate to the number of members hearing the appeals, or the number of appeals has increased sufficiently to warrant granting an extension of time. On any appeals for which an extension is granted, the order of the court is to include the amount of tax, if any, the taxpayer must pay during the period of extension.

REFERENCES:

N.J.S.A. 54:3-26.1.

1103.5 Judgment. A county board of taxation must enter a judgment on all appeals by November 15 of the tax year unless an extension for hearing and determination has been granted (see Section 1103.44). A permanent record of the judgments must be kept by the county board of taxation. A written memorandum of judgment must be sent to the assessor and to the taxpayer setting forth the reasons on which the judgment was based. Where the judgment will result in a change in the amount of tax to be paid a written memorandum of the judgment is to be transmitted to the tax collector also. If any party to the appeal believes that the judgment of the county board is inadequate, in error or improper, it may carry a further appeal to the tax court. The form of Judgment is shown as EXHIBIT XI-7.

REFERENCES:

N.J.S.A. 54:3-25, 26, 26.1.

Handbook, sec. 1104.2.

1103.51 Certain judgments forwarded to the Division of Taxation. When any judgment is rendered involving the appeal of a homestead rebate, veteran's deduction or a SeDiSu* deduction, the county board of taxation shall within 10 days from the date of the entry of the judgment, forward a copy of the

judgment to the Division of Taxation, Local Property and Public Utility Branch.

REFERENCES:

N.J.A.C. 18:12A-1.12.

1103.6 Binding effect of judgment (Freeze Act). If no further appeal is made from the judgment of the county board of taxation, the assessed value set by the board must remain in effect for the assessment year and for the next two years. Exception to this so called "Freeze Act" may be made only:

- (1) if the assessor can demonstrate, upon appeal to the county board of taxation, that the value of the property has changed since the assessment date; or
- (2) if a complete revaluation or approved reassessment of all real property in the taxing district has been put into effect.

The purpose of this law is to prevent a taxing district from harassing a taxpayer by forcing him to appeal his assessment every year, in order to receive equitable treatment.

The attorney general has set forth certain observations and guidelines for application of provisions of the Freeze Act in accordance with decisions of the courts (see Section 1104.6 for application of Freeze Act to Tax Court and appellate decisions). These observations and guidelines are shown following.

OBSERVATIONS:

The Supreme Court of New Jersey has held the Freeze Act is triggered not only by judgments on the merits but by judgments based on settlements as well. Further, the Court has noted that upon a settlement of a tax appeal, the Freeze Act may be invoked at the exclusive option of the taxpayer and not at the option of the municipality. However, although the municipality has no authority to

waive application of the Freeze Act, it can negotiate with the taxpayer as part of the settlement that the taxpayer agree to waive the Freeze Act as a condition for settlement.

GUIDELINES:

In order to insure that the Freeze Act is applied uniformly the Attorney General suggested the use of the following guidelines:

1. County board judgments which are not further appealed

In the event the county tax board enters a judgment reducing an assessment and that judgment is not further appealed by either party, the judgment constitutes a judgment final for purposes of the freeze statute. Since such judgment is entered by a county board by November 15 of the tax year, the 45-day period for filing an appeal with the Tax Court will have expired when the subsequent tax year's tax list is submitted by the municipal assessor. Unless a municipal-wide reassessment or revaluation was implemented in that subsequent tax year, the assessment designated on the preliminary tax list submitted by the assessor should reflect the valuation noted on the county board judgment in accordance with the provisions of the Freeze Act. The county board, in the context of implementing its responsibility of reviewing and revising the tax lists (N.J.S.A. 54:4-46 and 47), should adjust any assessment where a judgment final entered by the county board has not been appropriately reflected. In the event the assessor believes that a change in value has occurred after the previous year's assessing date so as to negate the effect of the Freeze Act, then the municipality, at the behest of the assessor, should file a conventional tax appeal with the county board in accordance with N.J.S.A. 54:3-21 in order to

prove that a change in value has occurred as a means of avoiding the application of the freeze.

2. Stipulated settlement of county board tax appeal

In accordance with the Kentile decision, the county board, at the option of the taxpayer, may enter a stipulated judgment effective only for that particular tax year at the option of the taxpayer. Under these circumstances, the judgment entered in accordance with such a settlement would only have an effect for that particular year and would not trigger the application of the Freeze Act for any of the two subsequent tax years. Following the entry of such a judgment, the assessor is obviously free to reflect a different value for the property in question in the subsequent year's tax lists.

3. The application of the Freeze Act in the event the county board judgment is further appealed

In the event a county board judgment is further appealed by either a municipality or a taxpayer, the county board judgment is clearly not a judgment final and thereby cannot be the basis for the application of the Freeze Act for the subsequent tax years. Assuming that the county board entered its judgment in year 1 and said judgment is further appealed, the municipal assessor is clearly authorized to reflect on the tax list in year 2 any assessment value he deems proper. Since the Freeze Act is not applicable under these circumstances, the assessor is not required to reflect the county board judgment entered for tax year 1 in the assessment list the assessor prepares for year 2 for the property in question.

REFERENCES:

N.J.S.A 54:3-26.

Township of Wayne v. Robbie's, Inc., 118 N.J. Super. 129 (App.Div.1972)
Certif.den. 60 N.J. 351 (1972).

South Plainfield Borough v. Kentile Floors, Inc. _____ N.J. _____ (1983).
Ltr. to County Tax Board Commissioners and County Tax Administrators
from Deputy Attorney General Harry Haushalter, April 11, 1983.

1104. Tax Court

1104.1 The Legislature created the Tax Court of New Jersey as a judicial body to hear complaints involving tax matters as a successor to the New Jersey Division of Tax Appeals. The Tax Court was established as an inferior court of limited jurisdiction, pursuant to the New Jersey Constitution, (Article VI, Section I, paragraph 1).

REFERENCES:

N.J.S.A. 2A:3A-1, et seq.
Rules of the Tax Court, 8:3-4(a), (b), (c) and (d).
Handbook, sec. 106.1.

1104.2 Petition of appeal. Petitions of appeal (called Forms of Complaint) will be accepted by the Tax Court from judgments, orders or determinations of a county board of taxation, the Director of the Division of Taxation or of any other state agency (including the Director of the Division of Motor Vehicles), or of a county recording officer in the case of realty transfer fee matters.

REFERENCES:

Rules of the Tax Court, 8:3-4(b), (c), (d).

1104.21 Commencement of action. Action is commenced by filing a complaint with the Office of the Clerk of the Tax Court. No appeal may be filed with the Tax Court to review a local assessment unless an action had previously been instituted before a county board of taxation. The Tax Court will not receive an appeal from a local assessment even when an action against the assessment had been instituted before the county board of taxation if:

(1) the appeal to the county board of taxation was withdrawn;

(2) the appeal to the county board of taxation was dismissed by the county board of taxation because the appellant failed to prosecute the appeal;

(3) the appeal to the county board of taxation was settled by mutual consent of the taxpayer and the assessor.

A petition of appeal bypassing hearing by the county board of taxation and filed directly with the Tax Court by a taxpayer or taxing district where the assessed value of the property under appeal exceeds \$750,000, must be filed with the Tax Court not later than August 15 of the year in question.

At the time a complaint is filed with the Tax Court all taxes that are due on the property involved for the current year must have been paid.

REFERENCES:

Rules of the Tax Court, 8:3-1(a)(b).

N.J.S.A. 54:2-39, 54:3-21.

1104.22 Time for filing the appeal or complaint. Complaints must be filed with the Tax Court in accordance with the following schedule:

(1) within 45 days following promulgation in the case of the Director's Table of Equalized Valuations, and also within 45 days following promulgation in the case of a county equalization table;

(2) complaints seeking a review of any other actions of a county board of taxation must be filed within 45 days after the date of the action to be reviewed;

(3) complaints seeking to review actions of the Director of the Division of Taxation, any other state agency, or a county recording officer with respect to realty transfer fee matters must be filed within 90 days after

the date of the action to be reviewed.

REFERENCES:

N.J.S.A. 54:1-35.4.

Rules of the Tax Court, 8:4-1 (a), (b).

1104.23 Copies of appeal or complaint to be served. Copies of the complaint must be served as follows:

(A) Appeals from a county board of taxation action -

- (1) A complaint by a taxpayer to review the action of a county board of taxation must be served on the county board of taxation, upon the assessor and upon the Clerk of the taxing district in which the property is located.
- (2) A complaint by a taxing district to review the action of a county board of taxation must be served on the county board of taxation, upon the assessor and upon the owner of the property if the appeal involves the assessment of a specific property.
- (3) A complaint by a taxpayer to review an action of a county board of taxation with respect to the property of another must be served upon the county board of taxation, upon the assessor, upon the Clerk of the taxing district and upon the taxpayer whose property tax assessment is at issue.
- (4) A complaint to review the action of a county board of taxation with respect to a county equalization table or an abstract of ratables, or any other action dealing with equalization or apportionment of county taxes must be served on the county board of taxation and upon the Director or Clerk of the board of chosen freeholders, and upon the Clerk of every municipi-

pality in the county, and upon the Attorney General of the State of New Jersey.

(5) A complaint to correct an error in assessment pursuant to N.J.S.A. 54:51A-7 must be served as follows:

- (i) If by a taxpayer, upon the county board of taxation and the Clerk of the taxing district;
- (ii) If by a municipality, upon the county board of taxation and the taxpayer;
- (iii) If by a county board of taxation, upon the assessor, upon the Clerk of the taxing district and upon the taxpayer.

(6) A complaint to review an order of the county board of taxation requiring a taxing district to revalue must be served upon the Clerk of the taxing district (unless the complaint is filed by the taxing district), upon the Director of the Division of Taxation and upon the Attorney General of the State of New Jersey.

(B) Appeals from a State tax action

(1) A complaint by a taxpayer to review an action of the Director of the Division of Taxation or any other state agency or office concerning a tax matter, or a county recording officer with respect to the realty transfer fee must be served upon the Director of the Division of Taxation and upon the Attorney General of the State of New Jersey.

(2) A complaint to review the apportionment valuations for distribution of public utility franchise and gross receipts taxes established by the Director of the Division of Taxation must

be served upon the Director of the Division of Taxation and upon the Attorney General of the State of New Jersey and upon the Clerk of every municipality entitled to share in the apportionment.

- (3) A complaint to contest the validity or amount of an assessment by the Director of the Division of Taxation of railroad property or franchise taxes must be served upon the Attorney General of the State of New Jersey, upon the Clerk of the taxing district in which the property is located, and, if the complaint is filed by the Attorney General or a taxing district, upon the taxpayer.

The rules of the Tax Court specify that service may be made either personally or by certified or registered mail upon the necessary parties.

REFERENCES:

Rules of the Tax Court, 8:5-1.

1104.24 Complaint forms. Sample complaint forms have been prepared by the Tax Court, including two sample complaint forms to be used by taxpayers and taxing districts for local property tax appeals. The complaint must state whether or not the amount in controversy exceeds \$2,000, so that the Clerk of the Tax Court will be able to assign those cases to the Small Claims Division of the Tax Court, where the amount at issue is \$2,000 or less. A brief statement of the factual basis of the claim and the relief sought must be contained in the complaint. The wording of the form of complaint may be modified to adapt the form to the facts, allegations and the relief sought in a particular case. Except for the general statement as to whether or not the amount in contention ex-

ceeds \$2,000 the complaint may request a change in a real property tax assessment without specifying the amount of such a change. A copy of the county board of taxation judgment or order must be attached to the complaint. The complaint may be served by an attorney or by a party to the complaint, and must be signed by the attorney of record or, if the party is not represented by an attorney, by the party to the proceeding.

REFERENCES:

Rules of the Tax Court, 8:3-4 (b), 8:3-5, 8:3-9, 8:11.
Handbook, 106.5.

1104.25 Discrimination appeals. If an appellant alleges that the property in question is not assessed at the common level or average ratio of assessment applicable in the taxing district, the complaint must set forth the common level or ratio of true value alleged to be applicable.

REFERENCES:

Rules of the Tax Court, 8:3-7.

1104.26 Filing fees. In general a filing fee of \$60 is charged upon the filing of a complaint with the Tax Court. However where a complaint is found to come within the jurisdiction of the Small Claims Division of the Tax Court the filing fee is just \$10.

In cases of multiple causes of action contained in a single complaint or counter claim the following schedule of fees applies:

- (1) Real Property in common ownership - If a complaint includes more than one separately assessed but contiguous parcel of property in common ownership, the filing fee is \$60 for the first separately assessed parcel and \$10 for each additionally assessed parcel included in the complaint;
- (2) Condominiums - if a complaint includes more than one parcel of real property separately assessed under either the Horizontal Property Act

- or the Condominium Property Act, the filing fee is \$60 for the first separately assessed parcel, and \$10 for each additional separately assessed parcel of property of the owner included in the complaint;
- (3) State taxes - if a complaint to review a state tax includes more than one separate state tax, the filing fee is \$60 for the first separate state tax and \$10 for each additional state tax included in the complaint;
- (4) Small claims - If the complaint is within the jurisdiction of the Small Claims Division the filing fee is \$10 for the first separately assessed parcel of property (or state tax), and \$2 for each additional separately assessed property (or state tax) included in the complaint.

In cases where the question at issue is eligibility for a homestead tax rebate, or a veteran, or SeDiSu* property tax deduction, no filing fee is charged.

REFERENCES:

Rules of the Tax Court, 8:12 (a) through (d).

1104.27 Amendments to pleadings. Complaints may be amended or supplemented upon motion and notice to all involved parties at any time prior to trial before the Tax Court. However, the amendment may not substitute or add any new or different cause of action.

REFERENCES:

Rules of the Tax Court, 8:3-8.

1104.28 Withdrawal of complaint. A complaint may be withdrawn at any time prior to the conclusion of the trial before the Tax Court, and even after that time with the permission of the court.

REFERENCES:

Rules of the Tax Court, 8:3-9.

1104.3 Pretrial proceedings. Certain pretrial proceedings involving discovery, exchange of appraisals or pretrial conferences may take place before the Tax Court calls the matter for trial.

1104.31 Discovery. The Tax Court rules permit parties to utilize discovery procedures in which a party may request factual information from his adversary through interrogatories, depositions or demands for admission, in order to ascertain the factual basis for the opposing party's case. The Tax Court rules provide that interrogatories must be answered within 60 days except in the case of actions to review State school aid and county equalization tables. In State school aid and county equalization appeals interrogatories must be answered within 20 days.

REFERENCES:

Rules of the Tax Court, 8:6-1 (a).

1104.32 Exchange of appraisals. In cases where the value of property is an issue, a party planning to use the testimony of a valuation expert must furnish each opposing party a copy of the written appraisal report of the expert in accordance with the following schedule:

- (1) At or prior to the pretrial conferences;
- (2) If there is no pretrial conference, then 10 days prior to trial date;
- (3) In small claims matters, at the time of the trial.

REFERENCES:

Rules of the Tax Court, 8:6-1 (b).

1104.33 Pretrial conference. Pretrial conferences may be conducted by the Tax Court in accordance with certain rules. The purpose of such a conference

is to winnow out any extraneous issues, contentions or arguments that any party to the proceeding might mistakenly or otherwise seek to introduce, and to in general "streamline" the case in order that when actual trial commences it may proceed in an efficient fashion. A pretrial order issued by the judge after the pretrial conference establishes the issues that are to be tried.

REFERENCES:

Rules of the Tax Court, 8:6-2.

1104.4 Trial by the Tax Court. All matters in the Tax Court shall be heard by a single judge sitting without a jury. A record is kept of all proceedings, and all testimony is required to be given under oath.

REFERENCES:

Rules of the Tax Court, 8:8-1 (a), 8:11.

1104.41 Submission without a trial. A party to a proceeding before the Tax Court, after giving notice to all other parties, may move for the submission of the case to the court without a trial. This might be done where it is felt that sufficient facts have been established, stipulated and admitted into the record and a hearing is not required. Such a procedure must be agreed to by the Tax Court, and the court may still require the submission of further material and briefs as it deems necessary.

REFERENCES:

Rules of the Tax Court, 8:8-1 (b).

1104.42 Assignment for hearing. The presiding judge assigns cases for hearing to a Tax Court location and judge. In making his assignment the presiding judge considers the convenience of the participants and the location of the property.

REFERENCES:

Rules of the Tax Court, 8:8-2.

1104.43 Trial in the Small Claims Division. The general rules of procedure in the Tax Court apply to the Small Claims Division, except that the pretrial conference may be held at the same time the case is scheduled for trial. Both the pretrial conference and the trial are informal and the judge may hear such testimony and receive such evidence as he deems necessary, but all testimony must be given under oath. All proceedings in the Tax Court, including small claims matters, must be recorded.

REFERENCES:

N.J.S.A. 2A:3A-7.

Rules of the Tax Court, 8:11.

1104.44 Burden of proof. The courts have held that in appeal proceedings before the Division of Tax Appeals in the past, and presumably now before the Tax Court, findings of the county board of taxation must be presumed correct (see paragraph 501.26 and 1103.43), and the burden of proving otherwise falls upon the party which carries the appeal to the Tax Court Level. An appeal from the judgment of a county board of taxation brings within the jurisdiction of the Tax Court the entire assessment, and not just the aspects which were argued before the county board. A proceeding brought from a judgment of a county board of taxation to the Court is therefore a "trial de novo".

REFERENCES:

City of Passaic v. Passaic Pioneer Properties Co., 55 N.J.Super. 94, 150 A.2d 78 (1959).

Veeder v. Township of Berkeley, 109 N.J.Super. 540 (App.Div.1970).

1104.5 Judgment. The Tax Court is required to reduce its findings of fact and law to writing and to file copies with the parties to the appeal and with the County Tax Administrator and with the assessor, clerk and collector of the taxing district. If any party to the appeal believes that the judgment of the Tax Court is inadequate, it may carry a further appeal to the Appellate Division of the

Superior Court.

REFERENCES:

N.J.S.A. 54:51A-21.

1104.6 Binding effect of judgment. The assessed value set by final judgment of the Tax Court must remain in effect for the assessment year and for the next two years. Exceptions to this "freeze act" may be made only:

- (1) if the assessor can demonstrate upon appeal, that the value of the property has changed since the assessment date, or
- (2) if a complete revaluation of all real property in the taxing district has been put into effect.

The purpose of this law is to prevent a taxing district from harassing a taxpayer by forcing him to appeal his assessment every year, in order to receive equitable treatment.

As a result of decisions by the courts, the attorney general has set forth certain guidelines for application of the Freeze Act (see Section 1103.6). In the guideline for application of the Freeze Act to a Tax Court or an appellate court "judgment final" (a judgment not further appealed), the attorney general has commented as follows:

"The Application of the Freeze Act in the event the Tax Court or the appellate courts issue a judgment final.

"The most troublesome aspect of the application of the Freeze Act relates to judgments entered by the Tax Court or appellate courts (Superior Court, Appellate Division, Supreme Court of New Jersey or United States Supreme Court). Normally, these judgments are entered at a time when one or both of the Freeze Act years have already passed. Thus, unlike the situation when the county boards can prospectively apply the Freeze Act to their own judgments which

are not further appealed, the judgments entered by the higher courts may involve adjustments of tax lists and county apportionments which have already been adopted. Of primary concern is the application of the Freeze Act to judgments entered by the Tax Court. In certain instances, the Tax Court judgment will reflect the application of the Freeze Act. For example, the judgment may state that the assessed valuation applies only for that particular tax year. This type of statement would likely appear on a stipulated judgment where the taxpayer has waived the application of the Freeze Act for the 2 years subsequent to the year under appeal. In other instances, the Tax Court may issue a judgment which establishes a fixed assessment for the tax year or years in question and further notes that the Freeze Act applies. Such judgments, assuming they are judgments final and are, therefore, not further appealed, reflect on their face the application or nonapplication of the Freeze Act. In those circumstances where the judgments state that the Freeze Act shall apply, the county boards have sufficient authority based on the judgments to reflect changes on the assessment lists for the tax years in question and to accord the affected municipality a credit toward its county taxes based on reductions in assessed valuations. The county boards should insist on receiving from the tax collector of the affected municipality a written confirmation that the tax refunds for the freeze years have been made as a necessary condition for the county boards to reflect the credits towards county apportionment on the table of aggregates.

"In the event a judgment is entered by the Tax Court or an appellate court which is silent as to the application of the Freeze Act, the county boards should not automatically assume that the Freeze Act applies. In fact, unless the judgment explicitly establishes the application of the Freeze Act, the county boards

should not enter into any guesswork and should not suppose that the judgment freezes the assessments for the two subsequent tax years. Without a judgment clarifying the application of the Freeze Act, the county boards simply have no authority to automatically consider the application of the Freeze Act. A taxpayer, who maintains that the Freeze Act should be applied based on a Tax Court or appellate court judgment, has an available remedy at the Tax Court level to seek a further order clarifying the application of the Freeze Act. Only upon the entry of such a clarifying order can the county boards confidently make adjustments reflecting the application of the Freeze Act."

REFERENCES:

N.J.S.A. 54:51A-21.

South Plainfield Borough v. Kentile Floors, Inc. N.J. (1983).
Ltr. to County Tax Board Commissioners and County Tax Administrators from
Deputy Attorney General Harry Haushalter, April 11, 1983.

1104.7 Correction of errors by consent. The Tax Court, upon the filing of a complaint by a property owner, a municipality or a county board of taxation, is permitted, upon written application, to correct typographical errors, errors in transposing and mistakes in tax assessments either during the tax year at issue or within the next three years. The complaint seeking a correction should state the facts concerning the error, and must be verified by affidavits submitted by the applicant. The Tax Court has stated the proper application of the correction of errors statute is to administrative, clerical or ministerial actions only, and not to complaints involving an assessor's opinion of value. However, a higher court has opined the correction of errors statute should be more liberally construed. Copies of complaints must be served upon the county board of taxation, and also upon the property owner or municipality as the case may be. Any party receiving a copy of such a complaint is entitled to file an objection or other answer with the Tax Court in accordance with the rules of the court.

REFERENCES:

N.J.S.A. 54:2-41.

Michael and Doris Manczak vs. Township of Dover, 2 N.J.Tax 529
(Tax Court 1981)

Thomas Sabella et als vs. Township of Lacey, _____ N.J.Super. _____
(1983).

1105. The Courts

1105.1 Appeals from Tax Court judgments may be carried to the Superior Court, Appellate Division within 45 days. Appellate Division judgments are subject to further review by the Supreme Court of New Jersey. No attempt is made in this Handbook to describe in detail the procedure before the appellate courts. The reader is referred to the Rules Governing the Courts of New Jersey.

1106. Traditional Relief Available to Appellants

1106.1 Prior to enactment of legislation in 1973 which became effective in 1978 (c.123, L. 1973) appeals were divided into two types: (1) non-discrimination, and (2) discrimination. Other than in a year in which a revaluation has been implemented, Chapter 123, Laws of 1973 at this juncture appears to have provided a method of determining whether an appellant in a discrimination tax appeal is entitled to any property tax relief, and if so, the amount of relief to which a deserving appellant is entitled. As employment of provisions of Chapter 123, Laws of 1973 becomes more widespread, judicial interpretation will eventually indicate the extent of its applicability. Together with the county boards of taxation, the recently established Tax Court, as well as the higher courts will play key roles in deciding what part Chapter 123, Laws of 1973 is to play in the tax appeal process.

Since this is a time of change in tax appeal structure and procedure, the following sections 1106.2, 1106.3 and subsections thereunder will reflect applicable methods and case law which have applied in the past and up until the present. Section 1107 will deal with newer provisions of the appeal process as they are set forth in Chapter 123, Laws of 1973.

1106.2 Non-discrimination appeals. Where a taxpayer or taxing district pleads that a property is not assessed at its taxable value, he need prove only the value of the property in order to have the assessment on the property in question raised or lowered to the taxable value.

REFERENCES:

Baldwin Construction Co. v. Essex County Board of Taxation, 16
N.J. 329 (1954).
Handbook, par. 501.12.

1106.3 Discrimination appeals. In a discrimination appeal, a taxpayer or taxing district pleads that the assessment on a particular property is too high or too low because other assessments are made at a different level. This may be so even though none of the assessments exceed the taxable value. For example, if most properties in a taxing district are assessed at 70 per cent of their true value, the owner of a property assessed at 90 per cent would have grounds for filing a discrimination appeal. A number of court decisions in recent years have broadened the relief that an appellate agency can grant in such cases.

1106.31 The Royal case. The Royal case, decided in 1909, established the rule which prevailed for many years. In this case, the court ruled that the only way in which relief could be granted to a taxpayer in a discrimination appeal was to raise the assessments on all other properties in the taxing district to full market value, as the statutes required for many years. Since this was almost impossible

to accomplish, relief was almost nonexistent.

(NOTE: The description of this case is presented for historical background - this is not now the rule for discrimination appeals.)

REFERENCES:

Royal Manufacturing Co. v. Board of Equalization of Taxes, 76 N.J.L. 402, affirmed 78 N.J.L. 337 (1909).

Sidney Glaser, "Legal Aspects of Assessing," Proceedings of the Third Annual Institute for Assessing Officers (New Brunswick: Bureau of Government Research, Rutgers, The State University, March, 1957), pp. 10-13.

1106.32 The Gibraltar case. In 1955, the courts established a new rule for discrimination appeals by stating in the Gibraltar case that the guiding principle should be equality of treatment. The court affirmed the right of appellate agencies, such as the county board of taxation and the Division of Tax Appeals, to set the assessment of any property at the "common level" which was found for other properties in the taxing district. In the example given in paragraph 1106.3, therefore, the appellant's assessment could be lowered to 70 per cent of true value - if he could prove that this was the common level for other assessments. However, the case did little to indicate how the common level should be proved.

REFERENCES:

Gibraltar Corrugated Paper Co. v. North Bergen Township, 20 N.J. 218 (1955).

Aaron K. Neeld, "The Gibraltar Case - Full True Value Assessments", New Jersey Municipalities, January, 1956, pp. 16-23.

1106.33 The Lackawanna case. In the Lackawanna case, decided in 1957, the court ruled that the taxing district's average assessment-sales ratio, determined by the Director of the Division of Taxation for State school aid purposes, could not be used by an appellant for establishing the common level of assessments in the district. This decision restricted the rule laid down in the Gibraltar case.

by making the proof of the common level a difficult and expensive procedure.

(NOTE: The description of this case is presented for historical background - this is not the current rule for discrimination appeals.)

REFERENCES:

D. L. & W. Railroad Co. v. Neeld, 23 N.J. 56 (1957).

William Miller, "Recent Developments in Legislation and Case Law", Proceedings of the Seventh Annual Conference for Assessing Officers, 1960 (New Brunswick: Bureau of Government Research, Rutgers, The State University, May, 1961), p. 14-20.
Handbook, par. 1002.44.

1106.34 The Kents case. In 1961, the court set the rule which, until the advent of Chapter 123 (see Section 1107), governed relief available in discrimination appeals. The court ruled that, in the absence of other information which would prove the common level of assessments, a "constructed" common level, such as the average assessment-sales ratio determined by the Director of the Division of Taxation, can be used as the common level. An appellant who can prove that an assessment is at a different level of true value than the average ratio, may have the assessment adjusted to conform to the average ratio.

The Kents case also produced the ruling by the court that the aggregate assessment of property, including land and building(s) as a parcel, is the controlling factor in a discrimination appeal. In other words, the land assessment and the building assessment cannot be considered separately for appeal purposes.

REFERENCES:

In re Appeals of Kents, Inc. 34 N.J. 21 (1961).

William Kingsley, "The Kents Case - A Remedy for Assessment Inequality", New Jersey Municipalities, February, 1961, pp. 4-8.

1106.35 The Siegal case. In the Siegal case, decided in 1962, the court further clarified the rule established in the Kents case by declaring that individual class assessment-sales ratios, which are determined for various types of properties as

an intermediate step in establishing the average assessment-sales ratio for all properties, cannot be used as a basis for claiming a reduction to the level for a given class of property. The average ratio for all classes remains as the evidence of a common level.

REFERENCES:

Siegal v. City of Newark, 38 N.J. (1962).
Handbook, sec. 1002.4.

1106.36 The Tri-Terminal case. In 1975, the court, ruling on a case in which an appellant sought relief by invoking the Kents doctrine (par. 1106.34), held that a taxpayer in a discrimination appeal must show that relative to other property, generally, in the taxing district, his property is being assessed on a less favorable basis. The court said if in a time of generally rising real estate prices his property has sustained the same enhancement of true value as have other properties generally, and if assessments have remained unchanged, this would leave the taxpayer in a position of relative uniformity for property tax treatment as was fixed by a fair and accurate revaluation carried out two or three years previously. The court noted that while it could find no discrimination in this case, nevertheless it did not necessarily approve of the practice of holding assessments the same year after year, since the law calls for separate assessment of each parcel annually at its true value on the assessing date. The court went on to say while practicalities preclude most assessors from reviewing every line item each year, there should nevertheless be alertness to changed valuation factors affecting individual properties in the years between revaluations.

REFERENCES:

Tri-Terminal Corporation v. Borough of Edgewater, 68 N.J. 405 (1975)
Local Property and Public Utility Branch News, January-February,
1976, p.1, May-June, 1976, p.2.

1106.37 The Piscataway Associates case. In this 1976 case the court, in holding that Kents case type of tax relief was applicable, stated that although a fair and accurate revaluation had established a common level at the time it was implemented, the carrying over of assessments year after year for some nine years had substantially undercut the presumption that values of all properties rose at the same or similar rate. The court felt property values in a municipality as large as Piscataway Township would probably not increase at the same rate in all neighborhoods over such a period of time. The court recognized that while in *Tri-Terminal Corp. v. Borough of Edgewater* (see par. 1106.36) they had accepted a general revaluation which was effective for 1969 as remaining valid for 1971 and 1972, nevertheless the correctness of this assumption dissipates with the passage of time.

REFERENCES:

Piscataway Assoc., Inc. et als vs. Township of Piscataway, 139 N.J. Super. 276 (1976); 71 N.J. 517 cert. denied (1977).

1107. Alternative Method of Relief Available to Appellants

1107.1 In an effort to systematize the adjudication of property tax appeals where discrimination is pleaded, the Legislature by the enactment of Chapter 123, Laws of 1973 adopted a procedure for use by tax appeal hearing bodies (county boards of taxation, the Tax Court, and the Appellate Division of the Superior Court) whereby the extent of relief to be granted, if any, could be calculated, once the true value of the property under appeal was determined by the hearing body.

1107.11 Average ratio and common level range. On April 1 of each year the Director of the Division of Taxation publishes an "average ratio" and a "common

level range" for each municipality. These figures are published in booklet form for each municipality in the entire state and are mailed to each county board of taxation, to each assessor and to each municipal clerk.

- (1) The "average ratio" for a taxing district as used here corresponds to the average ratio promulgated by the Director on the preceding October 1 for State School Aid purposes, subject to change as the result of appeal and judgment of the Tax Court.
- (2) The "common level range" for a taxing district is that range which is calculated to be 15% plus and minus of the average ratio. For example, where the average ratio is found to be 78.00%, the common level range would be: Lower Limit - 66.30%, Upper Limit - 89.70%.

REFERENCES:

N.J.S.A. 54:1-35a.

1107.12 True value. True value for purposes of the appeal adjudication process is that value deemed to be the price a willing buyer would pay to a willing seller at private contract on October 1 of the year prior to the year at issue, as determined by the hearing body.

REFERENCES:

N.J.S.A. 54:1-35a., b., 54:4-23.

1107.13 Calculation of relief entitlement. A ratio is struck by dividing the assessed value of the property under appeal by the true value of the property as determined by the hearing body. This ratio is called "subject property ratio".

- (1) If the subject property ratio falls within the common level range (see par. 1107.11(2)) no reduction is to be made in the assessed value of the appealed property, subject to (3) and (4) below.
- (2) If the subject property ratio exceeds the upper limit of the common

level range, or falls below the lower limit of the common level range, the assessment is to be determined by multiplying the average ratio for the taxing district times the true value for the subject property as determined by the hearing body, subject to (3) and (4) below. See Table XI-1, Example #1.

- (3) If the subject property ratio exceeds the county percentage level, and the district's average ratio is below the county percentage level, the assessment is determined by multiplying the average ratio for the taxing district times the true value for the subject property as determined by the hearing body. See Table XI-1, Example #2.
- (4) If the subject property ratio exceeds the county percentage level, and if the district average ratio also exceeds the county percentage level, the assessment is determined by multiplying the county percentage level times the true value of the subject property as determined by the hearing body. See Table XI-1, Example #3.

REFERENCES:

N.J.S.A. 54:1-35a et seq., 54:2-40.4, 54:3-22, 54:4-52.
Ltr. to Assessor of Each Municipality, Sidney Glaser, Director,
Division of Taxation, April 9, 1979.

1107.14 Alternative method of relief not applicable in revalued or reassessed municipalities. Although district average ratios and common level ranges will be published for all municipalities, taxpayers appealing assessments in those municipalities which have placed into operation an approved revaluation or reassessment may not, under the law, avail themselves of the alternative method of relief provided in the above paragraphs (paragraphs 1107.11 through 1107.13). Appellants in revalued or reassessed municipalities must prove the elements of discrimination in the traditional manner (see Sections 1106.1 through 1106.3).

REFERENCES:

N.J.S.A. 54:2-40.4(f), 54:3-22(f).

Rules For County Boards Of Taxation, N.J.A.C. 18:12A-1.19(f).

Ltr. to Assessor of Each Municipality, Sidney Glaser, Director, Division of Taxation, April 9, 1979.

1108. Defense of Appeals

1108.1 Although the legal burden of proof is upon an appellant, the assessor should accept the responsibility for providing a vigorous defense of his assessments if he is convinced that they are valid. A valid assessment should be defended even where the amount of money involved appears insignificant. If such assessments are allowed to go by default through lack of defense, the uniformity of the assessment list is jeopardized and the appeal may well serve as precedent for numerous additional appeals in following years. Where the assessor is convinced that an incorrect judgment has been rendered by an appellate agency, he should take the initiative in recommending to the municipal governing body that a further appeal be carried to a higher appellate agency. In weighing this step, of course, the estimated chances for a favorable judgment must be considered.

1108.2 Review of assessments. As soon as the assessor is notified that an appeal has been filed, he should review the appraisal and the assessment on the property and on any comparable properties which are cited in a discrimination appeal. This should include a visit to the property in order to make sure that the property record card is accurate and that the property has been classified and appraised correctly.

1108.3 Preparation of defense. Contested cases before appellate agencies usually are won on the basis of the preparation of the defense, rather than on any action taken on the spur of the moment at the hearing. Some county boards of

taxation encourage the assessor to prepare a written summary of his defense, particularly the statistical information concerning the properties. Even where this is not a requirement, the preparation of such a report is good practice, since the very act of assembling and presenting all of the information will assist the assessor in making a logical defense of the assessment.

1108.4 Legal counsel. The municipal attorney can be very helpful to the assessor in defending tax appeals. The attorney can lead the assessor in his own testimony before the appellate agency and, in most cases, will be an experienced cross-examiner of opposing witnesses. However, the assessor must recognize that, unless he has done his own work well in the first place, no attorney will be able to provide an adequate defense of the assessment. The assessor should make sure that his attorney is aware of all of the facts surrounding the property and the assessment before the hearing. A "dry run" of the defense sometimes is in order. In complicated cases, or where a large sum of money is involved, the municipal governing body may consider retaining special legal counsel having a wider experience in tax appeal matters than many municipal attorneys.

1108.5 Expert witnesses. The assessor, by virtue of his office, is considered an expert witness. Nevertheless, where large sums are involved, consideration should be given to retaining appraisal experts to substantiate the opinion of the assessor. Usually, if a case is important enough to bring before the Tax Court or higher courts, it is important enough to justify the expense involved in retaining expert witnesses. Such assistance should be accepted readily. However, the assessor should satisfy himself that the "expert" really is an expert, that he has prepared himself by actually viewing and appraising the

Table 11-1: Illustrations Of Property Tax Appeal Procedures Under Chapter 123, Laws of 1973 (N.J.S.A. 54:1-35a, b, c; 54:2-40.4; 54:3-22; 54:4-32)

Example #1 (para. 1107.13 (2))

Assumptions

County percentage level	100%
District average ratio	90%
15% Common level range	103.5 Upper limit
15% Common level range	76.5 Lower limit

Situation A

Subject property - true value	\$100,000
Assessment	\$120,000
Subject property ratio	120% (Exceeds upper limit)

Reduce taxable value \$100,000 x 90% = \$90,000
(Multiply by district average ratio - 90%)

Situation B

Property - same subject	\$100,000
Assessment	\$ 70,000
Subject property ratio	70% (Below lower limit)

Increase taxable value \$100,000 x 90% = \$90,000
(Multiply by district average ratio - 90%)

Example #2 (para. 1107.13 (3))

Assumptions

County percentage level	100%
District average ratio	90% (Below county level)
15% Common level range	103.5 Upper limit
15% Common level range	76.5 Lower limit

Subject property - true value	\$100,000
Assessment	\$110,000
Subject property ratio	110% (Exceeds county level)

Taxable value reduced \$100,000 x 90% = \$90,000

In this example, district average ratio is below county level - 90%

Subject property ratio exceeds county level - 110%

Therefore, taxable value is reduced by applying district ratio - 90%

Example #3 (para. 1107.13 (4))

Assumptions

County percentage level	100%
District average ratio	110% (Exceeds county level)
15% Common level range	126.5 Upper limit
15% Common level range	93.5 Lower limit

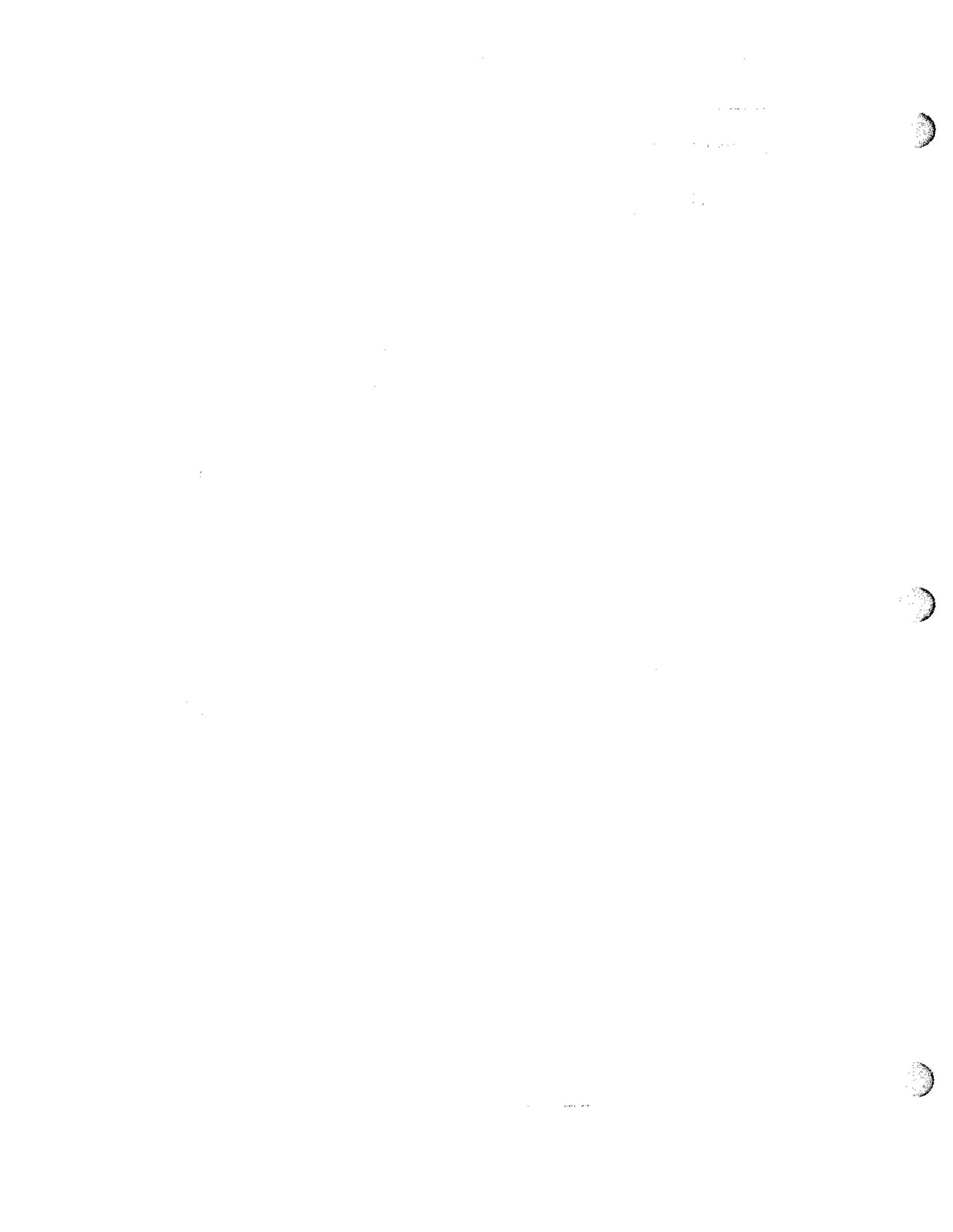
Subject property - true value	\$100,000
Assessment	\$120,000
Subject property ratio	120% (Exceeds county level)

Taxable value decreased to county level \$100,000 x 100% = \$100,000

In this example, both the district average ratio and the subject property ratio exceed the county percentage level

- (a) District average ratio - 110%
- (b) Subject property - 120%

NOTE: Provisions of Chapter 123, Laws of 1973 do not apply to any appeal from an assessment of real property in the year in which the taxing district placed an approved revaluation or reassessment program into effect.



property, and that he has not testified to contrary opinions in previous appeal cases.

1108.6 The assessor's role at the hearing. The assessor should bring with him to the hearing all of the pertinent records concerning the property under appeal and any comparable properties which have been cited in the case of discrimination appeals. The use of graphic materials - photographs, charts, and records - is particularly effective. Copies of property record cards should be provided for the use of the appellate agency. A written report dealing with the value of each property under appeal, presented by the assessor to the hearing body would be very helpful. The assessor should be prepared to give testimony to substantiate his assessment, and to assist with the cross examination of opposing witnesses, both as to the accuracy of their testimony and as to its completeness and adequacy.

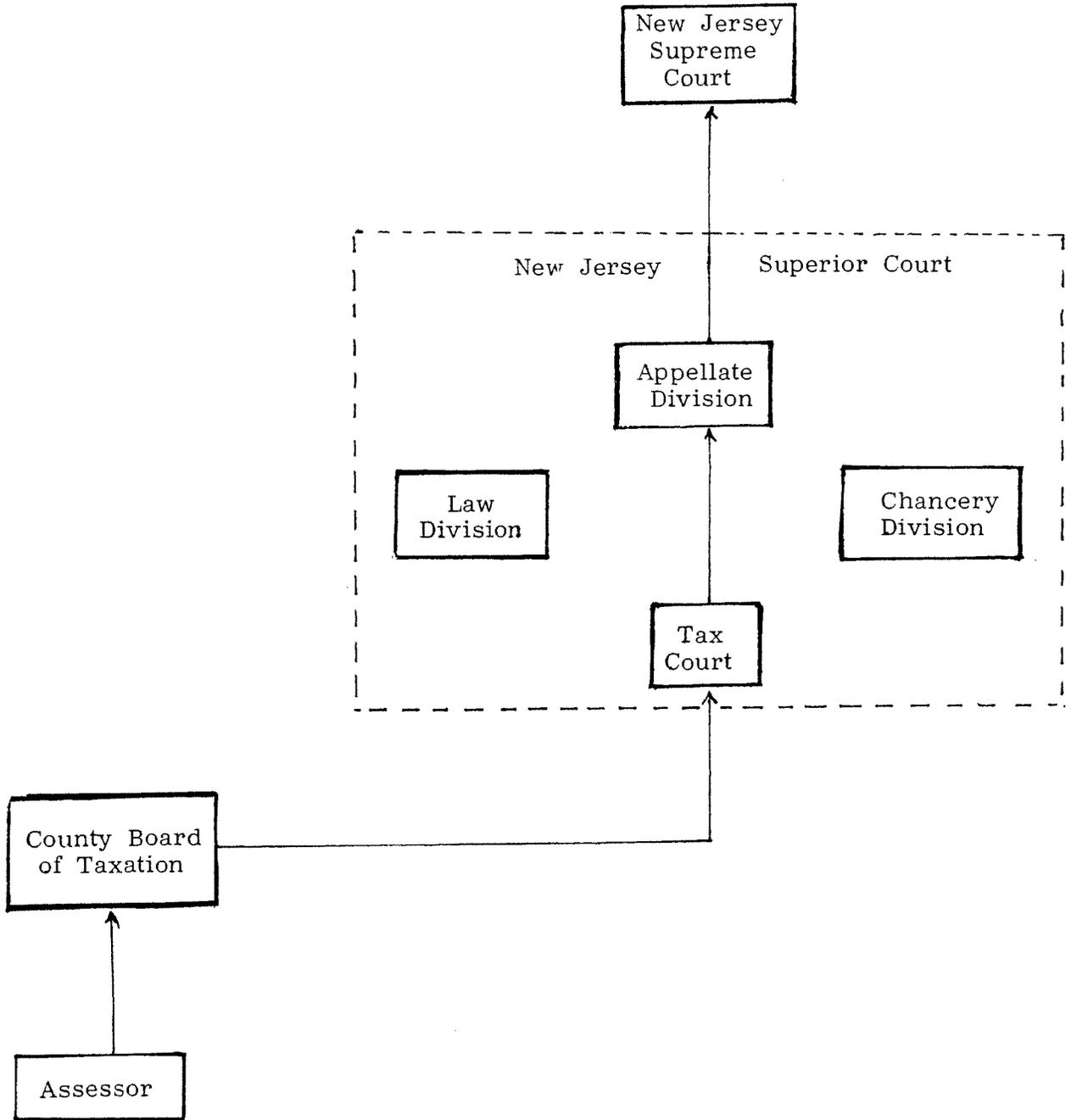
EXHIBITS

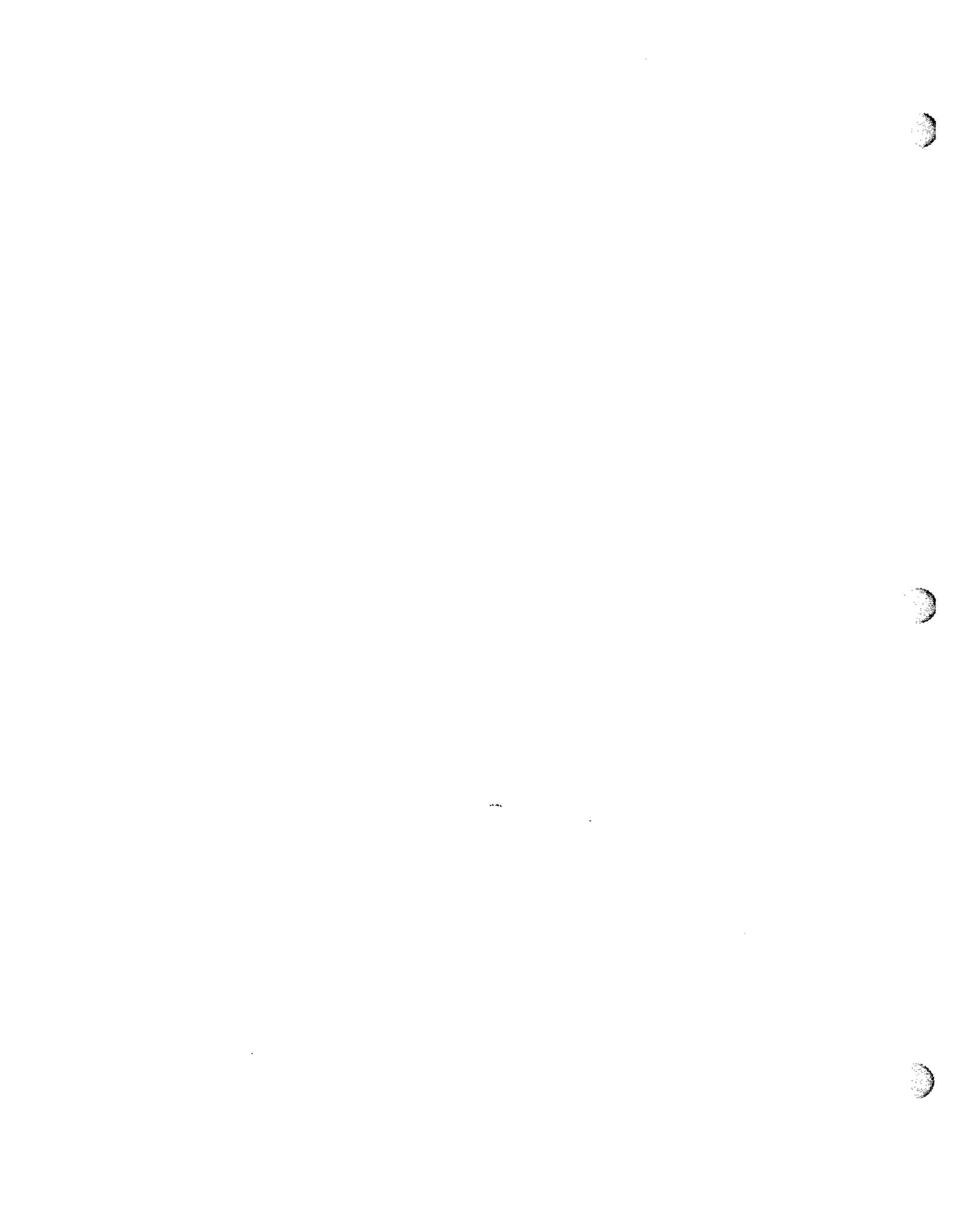
Handbook for New Jersey Assessors

EXHIBIT XI-1: Tax Appeal Procedure

Administrative
Remedy

Appeal To
Courts





FORM FOR CORRECTION OF ERRORS IN ASSESSMENTS

STATE OF NEW JERSEY }
COUNTY OF MONMOUTH } ss.

....., being duly sworn according to law, upon his oath,
deposes and says, that he or she is the Assessor of
and the following error or errors were made in the 19..... Tax List and Duplicate, and respectfully re-
quests the Monmouth County Board of Taxation to approve the corrections for the reasons stated below.

1.
Name of Owner
.....
Block Lot Street
.....
Page in Tax Duplicate Line
Land \$ Improvements \$ Total \$
Assessment

Should be corrected to read:

Land \$ Improvements \$ Total \$

For the following reason:

- (a) Building destroyed by fire on Date
- (b) Duplicate assessment on Land or Building which is already assessed on page
and line in the 19..... Tax List and Duplicate.
- (c) Property should be exempt and is qualified under R. S. 54
- (d) Typographical error in assessment.
- (e) Please state below any reason other than those listed above.

Sworn and subscribed
before me this day Assessor
of 19.....

Notary Public of N. J.

THIS SPACE FOR USE OF COUNTY BOARD

Dated:
Approved by the Monmouth County Board of Taxation.
By:, Sec'y

TOWNSHIP OF _____

APPLICATION FOR CORRECTION OF ASSESSED VALUATION
(Separate applications must be used for each parcel.)
(This form must be used and the questions clearly answered.)

LOCATION OF PROPERTY, No. Avenue or Street
BLOCK.....LOT.....Assessed Valuation, 19.....:LAND \$.....
What do you consider was the value of the property on the First of October?.....
.....
In what year was the property acquired?.....What was the full consideration.....
In what manner was the property acquired? State whether private sale or otherwise
.....
Did present owner have any interest in or lien upon the property previous to acquiring title?.....
If rented, give gross rental at present rentals?.....
If property is mortgaged, state amounts, rate of interest and mortgagee.....
.....
What insurance is carried on the building?.....
Since the property was acquired, what amount has been expended in permanent improvements?.....
Is the objection based on the valuation of the land or the building?.....
.....
Is the objection based upon any inequality? If so, give particulars.....
.....
Was an appeal ever filed on this property?..... If so, give date.....

The undersigned represents that he is the.....owner of the above described property and claims to be aggrieved by the aforesaid assessed valuation, and makes application to the ASSESSOR to have the same reviewed and corrected if in error.

OWNER..... ADDRESS.....
STATE OF.....
COUNTY OF.....ss.:

.....being duly sworn, says that he is the.....owner of the above-mentioned premises, and that the statements contained in this application are true.

Sworn to before me this..... NAME OF APPLICANT.....
day of..... 19..... ADDRESS.....
.....
Commissioner of Deeds or Notary Public

If action of the Local Board is not satisfactory, recourse can be had by applying to the COUNTY BOARD OF TAXATION on or before August 15th.

Unless all information required on the application is supplied, no action will be taken.



PETITION OF APPEAL
MONMOUTH COUNTY BOARD OF TAXATION
HALL OF RECORDS, MAIN ST.
FREEHOLD, NEW JERSEY 07728

Property Class _____

TO THE MONMOUTH COUNTY BOARD OF TAXATION

Your petitioner, _____
(Name of Taxpayer—PLEASE Type or Print)

residing at (Mailing Address) _____
respectfully states that the petitioner is, or represents the taxpayer of certain property situated in the taxing district of

(Municipality)
IDENTIFIED AS FOLLOWS: Block _____ Lot _____
Street Address _____

Name, Telephone No. and Address of Attorney— or person to be notified of hearing and judgment
(PLEASE Type or Print)

SECTION I APPEAL FOR REAL PROPERTY VALUATION (FILING DEADLINE—(MUST BE FILED ON OR BEFORE AUGUST 15th OF THE TAX YEAR

That said property has been assessed for taxation for the year 19____ at a valuation of: Your petitioner prays that the assessment be revised to the Taxable Value of the property, as follows.

Table with 2 columns: Assessment Category (Land, Improvement, Total) and Amount (\$). Rows for current assessment and desired assessment.

Basis for Appeal: True Value
Purchase Price _____
Date of Purchase _____
Discrimination Appeal Other Than Under C.123 (See Instruction 8)
Lot Size _____
Tax Court Pending yes/no
If yes, list year or years _____

Reason for Appeal _____

- SECTION II APPEAL FOR DENIAL OF:
1. Veteran's Deduction \$ 50.00
2. Veteran's/Service man's/Service woman's/ Surviving Spouse Deduction \$ 50.00
3. Senior Citizen's Deduction \$250.00
4. Disabled Person/Surviving Spouse Deduction \$250.00
5. Veteran 100% Disabled or Surviving Spouse of Said Veteran Total Exemption
6. Homestead Tax Rebate Reg. and/or Add'l. Rebate
7. Farmland Assessment Classification
8. Exemption of Property of (Religious, Charitable, Etc. - Specify)

MUNICIPALITY'S REASON FOR DENIAL: _____
(Attach Copy of Denial) _____

SECTION III ADDED ASSESSMENT OR OMITTED ASSESSMENT ONLY (must be filed on or before December 1st)

Added Assessment _____ Year _____ Omitted Assessment _____ Year _____

Table with 3 columns: FULL VALUE OF ADDED/OMITTED ASSESSMENT ONLY, NO. OF MONTHS ASSESSED, PRORATED VALUE. Rows for Land, Improvement, Total.

PETITION FOR REDUCTION

Table with 3 columns: FULL VALUE OF ADDED/OMITTED ASSESSMENT ONLY, NO. OF MONTHS ASSESSED, PRORATED VALUE. Rows for Land, Improvement, Total.

SECTION IV: I hereby certify and affirm that the statements set forth in the foregoing petition are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment

Date: _____ Signature of Petitioner _____

CERTIFICATION OF SERVICE

on _____, 19____, I, the undersigned, served upon the Assessor and the Clerk of (Municipality) _____ or upon the taxpayer, personally or by regular mail or certified mail, a copy of the within appeal.

I, certify and affirm that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: _____ Signed: _____
(Signature - Person Making Service)

This form has been prescribed by the New Jersey Division of Taxation. No other form will be accepted. Reproduction of this form is permitted provided it is of the same size and texture.

Docket No

MONMOUTH COUNTY
BOARD OF TAXATION

HALL OF RECORDS FREEHOLD, N.J.
MAIN ST 07728

PETITION OF TAX APPEAL

(PETITIONER)

VS

BLOCK LOT (MUNICIPALITY)

Attorney of Petitioner:

Address of Attorney:

FILED

THIS SECTION FOR COUNTY BOARD USE ONLY

LS	_____	_____	_____	\$
IS	_____	_____	_____	\$
TS	_____	_____	_____	\$

FOR ADDED—OMITTED ASSESSMENT
FULL VALUE NO. OF MONTHS PROPORTED
ASSESSED VALUE

Heard:
Decision:

MONMOUTH COUNTY BOARD OF TAXATION

In the matter of Appeal of

.....
vs.
.....

} SETTLEMENT STIPULATION

County of Monmouth, for the year 19

Block Lot

We, the undersigned, agree to adjust the above entitled appeal by settlement and submit for the consideration of the Monmouth County Board of Taxation, the following proposal:

19..... Assessment:		Adjusted to:	
Land	- - - - \$	Land	- - - - \$
Buildings	- - - -	Buildings	- - - -
Total	- - - - - \$	Total	- - - - - \$

Witness:

.....

.....
(Appellant)

By
(Attorney for Appellant)

.....
Assessor

By
(Attorney for Respondent)

MONMOUTH COUNTY BOARD OF TAXATION

In the matter of Appeal of

.....
vs.
.....

DISCONTINUANCE
OF APPEAL

County of Monmouth, for the year 19.....

Block Lot

The appellant hereby discontinues the above entitled appeal and requests that the same be no longer considered by the Monmouth County Board of Taxation.

Witness:

.....
(Appellant or authorized agent.)

Dated:

MONMOUTH COUNTY BOARD OF TAXATION

Appeal No. _____ Year _____

[]

MEMORANDUM OF JUDGMENT

Petitioner

vs

Respondent

Taxing District _____ Address _____

Block _____ Lot _____ Year _____

A duly verified Petition of Appeal having been filed with the _____ County Board of Taxation and said appeal having been heard and considered.

It is on this day _____ ORDERED that Judgment be entered as follows:

ORIGINAL ASSESSMENT		JUDGMENT	
Land	\$ _____	Land	\$ _____
Improvement	\$ _____	Improvement	\$ _____
Total	\$ _____	Total	\$ _____

JUDGMENT CODE # _____
(Explanation—See Reverse Side)

Code #40 Only _____

COUNTY BOARD OF TAXATION
COMMISSIONERS' SIGNATURES

ATTEST: _____

Memorandum explaining basis for Judgment _____

