

To: New Jersey Law Revision Commission
From: Whitney Schlimbach, Counsel
Re: Transfer of Jurisdiction in Tax Assessment Challenges
(*30 Journal Square Partners, LLC v. City of Jersey City*, 32 N.J. Tax 91 (Tax 2020))
Date: November 8, 2021

MEMORANDUM

Project Summary

When a taxpayer or taxing district disputes the assessed valuation of the taxpayer's property, and the valuation exceeds one million dollars, either party may select the forum in which to file a complaint. Jurisdiction over challenged assessments is governed by N.J.S. 54:3-21, which permits filers a choice of forum between the County Board or the state Tax Court.¹

While a party may choose to file with either forum when the valuation meets the monetary requirement, N.J.S. 54:3-21a(1) directs that "[a]n appeal to the Tax Court by one party . . . shall establish jurisdiction over the entire matter in the Tax Court." The statute does not provide any guidance to accomplish the transfer of jurisdiction in the event that the parties select different forums.

In *30 Journal Square Partners, LLC v. City of Jersey City*, the Tax Court considered the "proper procedural resolution of a dual filing" by opposing parties challenging the same property assessment, where one party timely filed with the Hudson County Board of Taxation (County Board) and the other timely filed with the New Jersey Tax Court.² Ultimately, the Tax Court determined that it had jurisdiction pursuant to N.J.S. 54:3-21 because of the Tax Court filing. The Court analyzed the appropriate manner of transferring jurisdiction to the Tax Court while maintaining each party's right to challenge the property assessment.³

Relevant Statute

The relevant portion of N.J.S. 54:3-21 states the following:

a. (1) Except as provided in subsection b. of this section a taxpayer . . . or a taxing district . . . may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, appeal to the county board of taxation by filing with it a petition of appeal; provided, however, that any such taxpayer or taxing district may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, file a complaint directly with the Tax Court, if the assessed valuation of the property subject to the appeal exceeds \$1,000,000 . . . *An appeal to the Tax Court by one party in a case in which the Tax Court has*

¹ N.J.S. 54:3-21a.

² 32 N.J. Tax 91, 96 (N.J. Tax 2020).

³ *30 Journal Square Partners*, 32 N.J. Tax at 102.

jurisdiction shall establish jurisdiction over the entire matter in the Tax Court. All appeals to the Tax Court hereunder shall be in accordance with the provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

If a petition of appeal or a complaint is filed on April 1 or during the 19 days next preceding April 1, a taxpayer or a taxing district shall have 20 days from the date of service of the petition or complaint to file a cross-petition of appeal with a county board of taxation or a counterclaim with the Tax Court, as appropriate . . .⁴

Background

In June 2020, the city of Jersey City (the City) filed a timely petition challenging assessments for eleven properties, owned by 30 Journal Square Partners, LLC (the Owner), with the Hudson County Board of Taxation.⁵ About a month later, the Owners filed a timely direct complaint challenging the same assessments with the Tax Court.⁶

The Tax Court determined that, pursuant to N.J.S. 54:3-21a(1), the Owner’s filing vested the “the Tax Court . . . [with] exclusive jurisdiction over the tax appeals,” including the City’s filing with the County Board.⁷ Although the parties did not dispute the Tax Court’s jurisdiction, they disagreed on the appropriate process for resolving the City’s filing to the Tax Court.⁸

The City argued that the County Board must “either dismiss or affirm [the City’s] pending petitions without prejudice, thereby allowing [the City] to file a timely appeal therefrom to the Tax Court.”⁹ The Owner contended that the County Board must dismiss the City’s filing with prejudice, for lack of jurisdiction, because their Tax Court filing had “immediately divest[ed the] county board of jurisdiction.”¹⁰ The Owner further asserted that, once the County Board’s jurisdiction was extinguished, the City’s only recourse was to file a counterclaim to the Owner’s pending direct appeal in the Tax Court.¹¹

Ultimately, the Court held that, “[i]n the absence of a clear and concise procedural mechanism to effectuate the transfer of a Board petition to the Tax Court,” the County Board’s current practice of dismissing without prejudice was the appropriate procedure.¹² The Court indicated that this resolution “provides the Tax Court with jurisdiction over the entire matter as required by N.J.S.A. 54:3-21(a)” and gives the City “the opportunity to continue to challenge the assessments at issue by filing a timely appeal to the Tax Court in compliance” with the statute.¹³

⁴ N.J.S. 54:3-21a [emphasis added].

⁵ *Id.* at 93.

⁶ *Id.*

⁷ *Id.* at 95.

⁸ *Id.* at 93-95.

⁹ *Id.* at 95.

¹⁰ *Id.* at 98.

¹¹ *Id.*

¹² *Id.* at 102.

¹³ *Id.*

Analysis

In holding that the City should request a “Memorandum of Judgment with Code #6B – Dismissal Without Prejudice – Hearing Waived” from the County Board, the Court considered the statute’s jurisdictional mandate and choice of forum clause, as well as each party’s right to maintain an independent cause of action to challenge property valuation assessments.¹⁴

Jurisdiction

The Court first reviewed the history of dual filings by opposing parties.¹⁵ In *Shav Assocs. v. Twp. of Middletown*, the Court determined that one party’s Tax Court filing vested that court with exclusive jurisdiction over the matter. The Court, however made no finding regarding the procedure to be followed when transferring the County Board filing to the Tax Court because in that case the County Board had already issued its judgment.¹⁶

By contrast, in *Atlantic City v. Greate Bay Hotel and Casino, Inc.*, the Court considered the appropriate procedure for transferring a County Board filing to the Tax Court, when the opposing parties filed in different forums.¹⁷ There, the Court “ordered the taxpayer to withdraw its complaints at the county board,” given the Tax Court’s exclusive jurisdiction under N.J.S. 54:3-21.¹⁸ The Court’s decision in *Greate Bay* was based on two key factors that the *30 Journal Square* Court found “irrelevant to the procedural issues at hand.”¹⁹

The *30 Journal Square* Court determined that it is “undisputed that a county board’s jurisdiction is extinguished because of a legitimate and timely direct appeal to the Tax Court” under N.J.S. 54:3-21a(1).²⁰ After resolving the jurisdictional question, the Court discussed the appropriate procedural mechanism for transferring a County Board petition to the Tax Court pursuant to N.J.S. 54:3-21.

Procedural Mechanism

First, the Court explained “that there are no statutory procedural guidelines or edicts as to how” the pending County Board petitions should be transferred to the Tax Court.²¹ The Court disagreed with the Owner’s position “that the party with a county board petition is limited to the

¹⁴ *30 Journal Square Partners*, 32 N.J. at 98 (“if there is no opportunity to file a timely direct appeal, is the party that filed a petition with county board limited to a timely counterclaim to the other party’s direct appeal?”).

¹⁵ The Court also reviewed *Union City Assocs. v. Union City*, 115 N.J. 17 (1989), which addressed dual filing by the *same* party and which held that “once a party has chosen a forum, it cannot later switch forums.”

¹⁶ 11 N.J. Tax 569, at 576 (N.J. Tax 1991).

¹⁷ 16 N.J. Tax 486 (N.J. Tax 1997), *aff’d*, 304 N.J. Super. 457 (N.J. Super. App. Div. 1997).

¹⁸ *Id.*, at 503.

¹⁹ *30 Journal Square Partners*, 32 N.J. Tax at 97 (the two factors considered by the *Greate Bay* court were (1) “that the taxpayer was engaging in gamesmanship” and (2) “the property at issue had an aggregate assessment of over \$260 million” and the “county board was ill equipped to handle such a large assessment”).

²⁰ *Id.* at 98.

²¹ *Id.* at 102.

filing of a timely counterclaim to protect its independent right of appeal.”²² Instead, the *30 Journal Square* Court adopted the reasoning in *Twp. of South Brunswick v. Princeton Orchards Assocs. L.L.C.*, an unpublished opinion, which addressed the same issue.²³

Finding that the statute “clearly and unequivocally accords both the taxpayer and the taxing district an independent right to appeal from a property tax assessment,” the *South Brunswick* Court cited the first sentence of N.J.S. 54:3-21a(1), which permits both taxpayers and taxing districts to bring a property assessment challenge.²⁴ Explaining that “the right of each party to pursue an appeal within the statutory time period is wholly independent of and unaffected by the course of action decided upon by the other,” the *South Brunswick* Court concluded that “the choice of forum . . . should not affect the substantial rights of the parties.”²⁵

To preserve each party’s right of appeal, while also respecting the statutory grant of jurisdiction, the *South Brunswick* Court determined that “a direct appeal deprives the county board from continuing to retain subject matter jurisdiction and thereafter deciding the case on its merits [but] it does not retroactively nullify a timely filed cause of action in the county board to preclude its litigation in another forum.”²⁶

To harmonize these two principles, the *South Brunswick* Court looked to the County Board’s current practice which recommends dismissing or affirming the petition without prejudice, which are “generally deemed as [judgments] entered without an adjudication of the merits of the case.”²⁷ Resolving the County Board petition in this way allowed the County Board party to file “a timely appeal from that judgment to the Tax Court,” and also “recognize[d] the county board’s inability to retain continuing jurisdiction.”²⁸

Applying this reasoning to the *30 Journal Square* parties, the Court concluded that the City “has the right to an independent cause of action” that “should not be extinguished by [the Owner] filing its own action with the Tax Court.”²⁹ Consequently, the Court directed the City to request a dismissal without prejudice from the County Board.

The procedure adopted by the Court has a dual function. First, it “provides the Tax Court with jurisdiction over the entire matter as required by N.J.S.A. 54:3-21(a).”³⁰ Second, it “provides

²² *Id.* at 98.

²³ *Id.* at 99 (“the court adopts the approach thoughtfully described by my colleague Judge Sundar in *Twp. of South Brunswick v. Princeton Orchards Assocs. L.L.C.*, 2013 WL 1787160, 2013 N.J. Tax Unpub. LEXIS 23 (Tax 2013), which this court now incorporates herein and adopts as its own . . .”).

²⁴ *30 Journal Square Partners*, 32 N.J. at 99.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 100, citing Handbook for County Boards of Taxation, § 1105.15, p.331-32 (July 2005).

²⁸ *Id.*

²⁹ *Id.* at 101.

³⁰ *Id.* at 102.

Jersey City the opportunity to continue to challenge the assessment at issue by the filing of a timely appeal to the Tax Court in compliance with the referenced statute.”³¹

Finally, the Court “note[d] that while N.J.S.A. 54:3-21(a) explicitly vests exclusive jurisdiction of all pending county board petitions with the Tax Court upon the filing of a direct appeal, it does not provide guidance on how this should be accomplished.”³² In the absence of a statutory mechanism to address the change in jurisdiction, the Court opined:

. . . that the Legislature should clarify that the filing of a direct appeal in the Tax Court does not vitiate the county board’s jurisdiction to dismiss the pending petitions without prejudice, and provide the procedural mechanisms to be followed by the parties and the county boards of taxation. This would then preserve the petitioner’s ability to continue the litigation in the Tax Court.³³

Legislation

Currently, there are two pieces of pending legislation that concern N.J.S. 54:3-21, neither of which address the procedural issue raised in *30 Journal Square Partners, LLC v. City of Jersey City*.³⁴

Conclusion

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

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ S.B. 605 and A.B. 1942 (introduced in January 2020 “[r]evises law governing assessment of real property”) (companion bills are identical); S.B. 1767 and A.B. 2796 (introduced in February 2020 “[p]rohibits certain third-party property tax appeals” and “clarifies ability to appeal property tax exempt status”) (companion bills are identical).