

**BIENNIAL REPORT OF THE SUPREME COURT COMMITTEE  
ON THE TAX COURT OF NEW JERSEY  
2020-2021 AND 2021-2022 COURT YEARS  
SUBMITTED TO THE SUPREME COURT OF NEW JERSEY**

**DATE: JANUARY 6, 2022**

## **INTRODUCTION**

The Supreme Court Committee on the Tax Court of New Jersey (the “Committee”) is comprised of members of the bench, tax bar (both public and private), state and local tax officials, and others concerned with the operation of the Tax Court of New Jersey. The Committee held five meetings beginning on October 22, 2020, and ending on November 18, 2021. Due to COVID-19 and the public health emergency measures in place for health safety, these meetings were successfully held remotely via the TEAMS application. The Committee Chairs appointed seven subcommittees: the General Tax Court Practice Subcommittee; the State Tax Practice Subcommittee; the eFiling/eCourts Subcommittee; the Legislative Subcommittee; the Standard Confidentiality Agreement Subcommittee; the Attorney Certification for Tax Court Practitioners Subcommittee, and the COVID-19 Subcommittee.

The General Practice Subcommittee, chaired by Edward Kuch, Esq. considered whether any generic Part VIII Rules needed amending due to case decisions and/or policy and procedure changes. The subcommittee submitted two proposed rule amendments for consideration, R. 8:3-4 and R. 8:11, to change local property Correction of Error cases filed pursuant to N.J.S.A. 54:51A-7 to the small claims division. The two proposed amendments were approved by the full Committee without an opposing vote.

This subcommittee also considered amendments to several other rules but did not bring them to the full Committee for a vote. These amendments were deemed unnecessary or were carried to the next Committee term.

The State Tax Practice Subcommittee, chaired by Michael Guariglia, Esq., considered changes to Part VIII Rules for state tax practice. The subcommittee proposed amendments to the following rules to reflect current practice and were uncontroversial. They were unanimously approved by the full committee.

- R. 8:3-1. Amend the language to include the requirement that attorneys file state tax complaints through eCourts Tax and that self-represented litigants may file electronically or on paper.
- R. 8:3-3. Add language that a pleading can be physically or electronically signed.
- R. 8:5-3. Clarify that service of a complaint is on the New Jersey Attorney General.

With the requirement that initial pleadings in state tax cases be electronically filed in eCourts Tax, the subcommittee also discussed amending R. 8:5-4(4), R. 8:5-4(6) and R. 8:5-5 to establish valid electronic service of a state tax complaint on the Attorney General and the New Jersey Division of Taxation, the only defendant in almost all State tax cases. These proposed amendments proved controversial with the subcommittee and full committee, and generated much discussion. As neither

committee reached a consensus, there were no proposed amendments presented or put to a vote. Ultimately, the Acting Administrative Director of the Courts issued a Notice dated November 19, 2021, setting forth valid electronic service on the Attorney General and the Division of Taxation.

The eFiling/eCourts Subcommittee, chaired by Amber Heinze, Esq., considered changes to rules to reflect eCourts procedures. The subcommittee had no recommendations but raised several issues regarding eCourts Tax and possible enhancements. This subcommittee's observations and recommendations are an integral part of the ongoing development and operation of eCourts Tax, and they will be discussed with the eCourts IT team. One such enhancement underway is to give the assessor's office, the Tax Collector, and the County Board of Taxation, the ability to receive electronic service or electronic notifications of only a complaint's filing and the judgment issued.

The Legislative Subcommittee, chaired by Jeffrey M. Gradone, Esq., monitored legislative bills, which could affect practice in the Tax Court and might require rule changes. No statutes were enacted during this Committee cycle that require a change to court rules relating to the Tax Court. However, there were several discussions on legislation (proposed or enacted) relative to local property tax appeals: one regarding property inspections as limiting the ability to file an appeal against an assessment, and another whether N.J.S.A. 54:5-13 should be amended so

a buyer of a property is made aware that the taxing district is challenging the property's assessment.

The Standard Confidentiality Agreement Subcommittee, chaired by Alex Genato, Esq., considered a standard form of a confidentiality agreement to ensure consistency and protect the interests of all parties. The subcommittee discussed several options for a standard template, but was unable to come to a consensus. This item will be carried to the next Committee term.

The Attorney Certification for Tax Court Practitioners Subcommittee, chaired by Michael Benak, Esq., monitored the proposed regulations and standards developed by the Attorney Certification Subcommittee and previously submitted to the Supreme Court Board on Attorney Certification. The Board is reviewing the submission and moving it through the established certification procedure.

The COVID-19 Subcommittee was established to review the effects the pandemic was having on the operation of the Courts overall and Tax Court in particular. Martin Allen, Esq. was designated Chair. The subcommittee reviewed procedures and the technology implemented to enable the court to continue its operations remotely. The subcommittee discussed recommendations, lessons learned, benefits of remote operations and suggestions on what procedures could successfully be continued post COVID.

## **RULE AMENDMENTS RECOMMENDED FOR ADOPTION**

### **A. Proposed Amendments to Rule 8:3-4. Contents of Complaint, Generally**

R. 8:3-4(d)(2) sets forth the required content of a complaint in a local property tax matter that is within the small claims classification. The General Practice Subcommittee recommended amending the rule so that Correction of Error cases filed pursuant to N.J.S.A. 54:51A-7 be included within the small claims designation.

Also, it recommended amending the rule to clarify that a complaint should so state when a case is designated as small claims based on the amount of the prior year's taxes pursuant to R. 8:11(a)(2). The full committee voted unanimously to amend the rule as recommended.

The proposed rule amendments follow.

### 8:3-4. Contents of Complaint, Generally

(a) . . . no change

(b) . . . no change

(c) . . . no change

(d) Small Claims Classification

(1) . . . no change

(2) In local property tax cases, the complaint shall state whether each separately assessed parcel of property under appeal is a class 2 property (1-4 family residence), ~~[or]~~ a class 3A farm residence, a local property tax case to correct an error pursuant to N.J.S.A. 54:51A-7, or is based on the amount of the prior year's taxes pursuant to R. 8:11(a)(2). ~~If~~<sup>If</sup> small claims jurisdiction is based on the prior year's taxes, there shall be included with the complaint a copy of the prior year's final tax bill or the current year's notice of assessment or a statement certifying the prior year's taxes. Where small claims jurisdiction is based on the prior year's taxes, a complaint that fails to confirm the prior year's taxes as specified in this subparagraph shall be treated as a nonconforming paper that shall be returned stamped "Received but not filed (date)" as provided in R. 1:5-6(c).

**B. Proposed Amendment to Rule 8:11. Small Claims Division; Practice and Procedure**

R. 8:11(a)(2) sets forth the local property tax cases that fall within the small claims jurisdiction. The General Practice Subcommittee recommended amending the rule so that Correction of Error cases filed pursuant to N.J.S.A 54:51A-7 be included within the small claims designation. The full committee voted unanimously to amend the rule as recommended.

The proposed rule amendment follows.



## **8:11. Small Claims Division; Practice and Procedure**

(a)(1) . . . no change

(2) The small claims division will hear all local property tax cases in which the property at issue is a class 2 property (1-4 family residence), ~~[or]~~ a class 3A farm residence, a case to correct an error pursuant to N.J.S.A. 54:51A-7, and all other local property tax cases in which the prior year's taxes for the subject property were less than \$25,000. Cases raising exemption or abatement issues are not eligible for the small claims division. Local property tax cases in the small claims division shall be assigned to the small claims track.

(b) . . . no change

(c) . . . no change

(d) . . . no change

(e) . . . no change

**C. Proposed Amendments to Rule 8:3-1. Commencement of Action**

A December 8, 2020 Notice to the Bar required attorneys to file all state tax cases electronically through eCourts Tax. eCourts Tax is also available for self-represented litigants. The State Tax Subcommittee recommended amending R. 8:3-1 so the language is consistent with the requirement that attorneys file state taxes through eCourts Tax and that self-represented litigants may file electronically or on paper. The full committee voted unanimously to amend the rule as recommended.

The proposed rule amendments follow.

### **8:3-1. Commencement of action**

(a) An action is commenced by filing a complaint with the Clerk of the Tax Court. Pursuant to R. 1:32-2A, the Supreme Court has approved the mandatory use of eCourts Tax by attorneys to commence all [local property] tax matters in the Tax Court. All [State] tax matters filed by pro se litigants may be [are] commenced through the filing of a paper complaint or through use of eCourts Tax.

(b) . . . No change

(c) . . . No change

**D. Proposed Amendment to Rule 8:3-3. General form of pleading; appearances in court**

The State Tax Subcommittee recommended amending the rule to add language that a pleading can be signed physically or electronically and recommended editing language for clarity. The full committee voted unanimously to amend the rule as recommended.

The proposed rule amendments follow.

### **8:3-3. General Form of Pleading; Appearances in Court**

In addition to the special pleading requirements prescribed by these rules all pleadings shall generally accord as to form with the rules governing pleadings in the Superior Court. A pleading shall be physically or electronically signed by the attorney of record or, if not represented by an attorney, by the party. If a party is not represented by an attorney, the pleading shall include the name, residence address, and telephone number of the party. Except as provided by R. 1:21-1(c), an entity other than a sole proprietorship, however formed and for whatever purpose, [other than a sole proprietorship] shall neither appear nor file any paper in any action in the Tax Court except through an attorney authorized to practice in this State.

**E. Proposed Amendment to Rule 8:5-3. On Whom Served**

The State Tax Subcommittee recommended an administrative amendment to clarify that service is made on the Attorney General of the State of New Jersey. The full committee voted unanimously to amend the rule as recommended.

The proposed rule amendment follows.

**8:5-3. On Whom Served**

(a) Review of Action of a County Board of Taxation or Direct Review by the Tax Court.

(1) . . . no change

(2) . . . no change

(3) . . . no change

(4) A complaint to review the action of a County Board of Taxation with respect to a County Equalization Table or Abstract of Ratables or any other action dealing with the equalization or apportionment of county taxes shall be served upon the County Board of Taxation and upon the Chief Executive Officer and the Clerk of the Board of Chosen Freeholders of the County and upon the Clerk of every taxing district in the county and upon the Attorney General of the State of New Jersey.

(5) . . . no change.

(6) . . . no change.

(7) . . . no change.

(8) . . . no change.

(9) . . . no change.

(b) ... no change

(c) ... no change

## **RULE AND NON-RULE AMENDMENTS CONSIDERED**

The General Practice Subcommittee considered several issues that commonly arise in Tax Court practice and might require amendments to the Rules to address. The subcommittee brought these to the full Committee with recommendations and for discussion. After further discussion, the full Committee determined either not to move these recommendations forward or deferred them for consideration at a future date.

- The subcommittee considered amending R. 8:3-5(a)(1) to eliminate the requirement that a Case Information Statement be included with a counterclaim in a local property tax appeal. It determined the document served a useful purpose and recommended not to amend this requirement. The full committee unanimously voted to accept the subcommittee's recommendation.
- The subcommittee recommended creating a new and separate subcommittee to review and update the Standard Interrogatories for valuation and exemption cases. The full committee unanimously voted to accept the subcommittee's recommendation. This was deferred to the next Committee term.
- **Rule 8:3-9** to address the conflict between Rule 4:23-5 and Rule 8:3-9 by amending R. 8:3-9 and allowing a case to be withdrawn after an order dismissing it has been entered. This was deferred to the next Committee term.
- **R. 8:4 et seq. (cross-referencing R. 1:3-3)**. As of October 1, 2021, the U.S. post Office added two days to its previous three-day guarantee for



first class mail. For example, R. 8:4-1(a)(2) and 8:4-2 (cross-referencing R. 1:3-3) add three days for mailing, to the 45-day deadline to file an appeal from a county board judgment. R. 1:3-3 says, “when service of a notice or paper is made by ordinary mail, and a rule or court order allows the party served a period of time after the service thereof within which to take some action, 3 days shall be added to the period.” Since the Supreme Court Committee on Civil Practice may consider amending R. 1:3-3 to reflect the increased mailing time, the Tax Court Committee tabled this issue until the next term to determine whether amending R. 8:4 et seq would be necessary.

- **R. 8:6-2(a).** The interplay between General Practice Rules and Tax Pretrial Conference Rules: R. 4:25-3; 4:25-7; Appendix XXIII; new R. 4:25-8 and R. 8:6-2(a).1. This was deferred to the next Committee term.

Respectfully Submitted,

/s/ Mala Sundar  
Hon. Mala Sundar, P.J.T.C.

**2020-2022 Supreme Court Committee on the Tax Court**

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**Staff to the Committee:**

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Lynne E. Allsop, Deputy Clerk, Tax Court of New Jersey