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NJ Tax Court Holds Freeze Act Does Not Apply Unless Assessment Is Adjudicated

Property taxpayers in New Jersey have long relied upon application of the Freeze Act (N.J.S.A. 54:51-8) to maintain stability in assessments for two years after a judgment resulting in an assessment reduction. In its opinion in *Hackensack City v. Bergen County* (Tax Court, Oct. 24, 2017), the New Jersey Tax Court has answered the question as to whether the Freeze Act applies as to a non-adjudicated assessment with a resounding no.

The case involved an assessment that the City of Hackensack (the county seat) imposed on property that Bergen County owned and used for administrative offices. In 1994, the city unilaterally revoked the real property tax exemption for the property. In New Jersey, government owned properties are typically exempt provided they are used for exempt purposes. The county appealed the assessor's decision and the city's assessments from 1994-1998 to the Bergen County Board of Taxation. The county tax board reinstated the property tax exemption, and in so doing, adjudicated the value of the property at $0. In New Jersey, an exempt property carries an assessed value supposedly reflecting the property's fair market value, even though the property itself is exempt and the owner pays no taxes. The county tax board dismissed the county's challenges to the 1995 through 1996 assessments, because they were not timely filed. However, the tax board granted the county's challenges to the 1997 and 1998 assessments.

The city appealed the Board of Taxation's decision to the Tax Court, but while the appeal was pending, the city ignored the county tax board's ruling and continued to assess the property as if it were not exempt. Meanwhile, the county appealed the dismissal of its challenges to the 1995 through 1996 assessments. All the appeals were consolidated, and the Tax Court affirmed the exemptions for the 1994, 1997 and 1998 tax years, and affirmed the dismissals for the 1995 and 1996 tax years. The parties then appealed the Tax Court's decisions to the Appellate Division, which affirmed the Tax Court's determinations.

The county then moved before the Tax Court to apply the Freeze Act to the county tax board judgment for the 1994 tax year (the base year judgment), which would have effectively reduced the assessments for 1995 and 1996 to $0 and resulted in no taxes being owed for those years. The Tax Court began its analysis by noting that the Freeze Act does not apply to determinations of exempt status. It applies only to determinations of value. Then the remaining question, as articulated by the Tax Court, was "whether the Board entered a judgment as to the value of the property or simply the exempt-status when it issued its judgment for 1994."

The Tax Court found that the county board judgment was ambiguous on its face as to whether it constituted a determination of value or solely a determination of the exempt status of the property. In that regard, "in order to have a final judgment as to the value of the property, one or both parties would have to proffer evidence regarding their conclusion of fair market value." Despite the court's request for a proffer of proofs submitted to the county board on value, "[n]either party was able to provide any evidence of value being presented to or litigated before the Board." Given this state of the record, the court also noted, "To say that a property has a value of zero defies logic. All property has inherent value. A tax exemption does not strip a property of its value. Rather, it simply relieves a taxpayer from an obligation of paying the tax owed." Hence, the Tax Court found that the $0 assessment judgment of the county tax board reflected "the effect of the tax exemption, *i.e.*, zero taxes owed, not value." Because there was no adjudication of the assessed value, the Freeze Act could not apply to the county board's 1994 judgment reducing the assessment, and thus, the 1995 and 1996 assessments were sustained by the court. Taxpayers should therefore be wary: to seek application of the Freeze Act, there must have been an adjudication of value resulting in a judgment through trial or a proffer of value through the tax appeal settlement process resulting in an assessment adjustment.

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