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NJ Tax Court Addresses the Strange Confluence of Adverse Possession and Property Taxation

When is a taxpayer entitled to a refund of property taxes mistakenly paid for property that the taxpayer does not own? The Tax Court of New Jersey recently ruled that a municipality's practice of assessing taxes on a property owner who no longer owned the subject property due to adverse possession was an error requiring the refund of the taxes paid. In *Hanover Floral Co. v. East Hanover Township* (Tax Court, September 29, 2017) (released for publication on October 4, 2017), the Tax Court considered the effect of a subdivision on a lot for taxation purposes, and the errant tax assessment. The plaintiff, Hanover Floral, obtained title to half of the property by adverse possession. The remaining portion of the property was to be deeded to the township as part of a development by the former record owner. By deed dated January 30, 2001, the adversely possessed portion of the property was deeded to Hanover Floral and merged with its pre-existing adjacent property, and the deed was filed with the county clerk on March 5, 2001. The township's amended official tax map showed the adversely possessed portion of the property joined by deed of merger with Hanover Floral's pre-existing property.

From 2001 through 2014, however, the township levied taxes on Hanover Floral for the newly configured remaining portion of the property to be deeded to the township. A title search in 2011 revealed the error, and the assessor was notified at that time. The township refused to concede the mistake and continued to levy taxes against Hanover Floral for the property. Hanover Floral continued to pay the improperly levied taxes through 2012, when it sought relief from the court and a refund pursuant to N.J.S.A. 54:4-54.

The township argued that the payment of the taxes was not by "mistake," because Hanover Floral knew it was paying taxes on property it did not own, and therefore Hanover Floral was not entitled to a refund. The Tax Court concluded that Hanover Floral falsely believed it was paying taxes on the property acquired through adverse possession, and therefore it paid taxes by mistake. After Hanover Floral discovered the mistake, it immediately notified the township and paid future taxes under protest.

The Tax Court found that Hanover Floral indeed paid property taxes on the property of another by mistake, as defined in N.J.S.A. 54:4-54, and therefore a refund was mandatory under that statute. The court said the township would have to refund Hanover Floral for payments it made from 2009 onward, noting the three-year statute of limitations contained in N.J.S.A. 54:51A-7 precluded any refund to Hanover Floral for payments it made before 2009.

The case reinforces the need for property owners to be astutely aware of property tax assessments, particularly with respect to mergers by deed or subdivisions that would affect the assessments at issue. In this case, the property Hanover Floral acquired through adverse possession was merged by deed with its existing parcel. The company had no right, title or interest in the remaining parcel and therefore should not have been responsible for the taxes on that property.

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