



## I. Procedural History

Phillip J. Smith (“decedent”) died a widower on October 5, 2010. His sister-in-law is the Executrix of his estate and its primary beneficiary. At the time of his death, his assets included \$576,759.00 in ABP retirement benefits (for which his sister-in-law was the sole named beneficiary) and a 2007 Lincoln Town Car. On January 31, 2011, the Estate filed a New Jersey Transfer Inheritance Tax Return, in which it listed the ABP funds as a tax-exempt state pension. Additionally, the Estate reported the value of the 2007 Lincoln Town Car as being \$5,000.

On audit, Taxation made multiple adjustments to the calculations reported on the return, including a determination that ABP proceeds are subject to New Jersey inheritance tax pursuant to N.J.S.A. 54:34-1(c), and also increased the value of the car to reflect a Kelley Blue Book value of \$25,000. On November 29, 2012, Taxation issued its assessment of \$92,282.00 in additional inheritance tax.

The Estate paid the additional tax and administratively protested the assessment requesting a refund with interest. The Estate argued that as a matter of law, *all* state-sponsored and state-administered pension plan entitlements are not subject to inheritance tax and therefore the decedent’s ABP funds are tax exempt. Also, the Estate requested a \$20,000.00 compensation deduction for the vehicle because the Estate had sold the car for less than market value to decedent’s former caregiver’s husband as additional compensation for the caregiver’s services.

On July 9, 2013, Taxation issued a Final Determination denying a refund. On October 3, 2013, the Estate timely filed the instant Complaint and on October 31, 2013, Taxation filed its Answer. Both parties filed motions for partial summary judgment on the ABP issue, which the court denied without prejudice on May 17, 2016. The court scheduled the matter for trial. Shortly

before the trial date, both parties submitted additional certifications and documents and requested that the court decide the case by submission pursuant to R. 8:8-1(b).

## **II. Findings of Fact**

The court makes the following findings of fact pursuant to R. 1:7-4.

During his lifetime, the decedent was an accomplished professional actor, director, producer, and teacher of the dramatic arts. In 1970, the decedent accepted a position as an assistant professor at the newly established Brookdale Community College (“Brookdale”) in Lincroft, New Jersey.

At the time decedent was hired, he had never worked in New Jersey’s public sector and was not enrolled in the State’s public pension system. As a result of laws enacted in 1967 and amended in 1969, newly hired county college personnel were entitled to retirement benefits through one of two state-sponsored pension systems depending upon each new hire’s employment status. Full-time faculty members or visiting professors (defined as anyone receiving 50% or more of base salary) were required to enroll in the ABP retirement system<sup>1</sup>. Part-time or adjunct faculty members were not eligible for ABP, and consequently were enrolled in the Public Employees’ Retirement System (“PERS”).<sup>2</sup>

Decedent’s ABP enrollment application contains a certification from Brookdale that states “I hereby certify that this applicant is . . . a regularly appointed teaching or administrative staff member in an applicable academic position, as determined by the Board of Higher Education, and

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<sup>1</sup> See N.J.S.A. 18A:66-170.

<sup>2</sup> Plaintiff represented that decedent was hired as a part-time employee and should have been enrolled in PERS with the election to enroll in ABP after his second year of teaching. Plaintiff provided no factual basis for this representation. The documents obtained from the New Jersey Department of the Treasury, Division of Pensions and Benefits, which were submitted to the court, clearly state that decedent was a full-time employee eligible for ABP enrollment. Accordingly, all arguments germinating from this misrepresentation will not be addressed by the court.

is therefore eligible for participation in the Alternate Benefit Program.” On August 18, 1970, decedent completed an application for a Teachers Insurance and Annuity Association of America (“TIAA”) retirement annuity contract and a College Retirement Equity Fund (“CREF”) retirement unit-annuity certificate as required by the ABP. Pre-tax deductions from decedent’s paycheck began on October 1, 1970, which were held in escrow during his first year of employment. Thereafter all of decedent’s ABP payroll deductions were forwarded to TIAA and CREF. Decedent continued to teach at Brookdale until his retirement in 1997, at which time he had over twenty-five years of continuous service. He died in 2010 without a surviving spouse or any living blood relatives.

The Estate is not the first taxpayer to question whether ABP funds are a tax-exempt state pension. Since ABP’s enactment, Taxation has had multiple inquiries from taxpayers questioning the imposition of inheritance tax on ABP proceeds. Taxation produced three letters (dated 1992, 1997, and 2006) in which it articulated to different, respective taxpayers that ABP proceeds are taxable and not exempt.

### **III. Legal Analysis**

“The New Jersey Transfer Inheritance Tax, N.J.S.A. 54:34-1 et seq., is a levy on the right of succession to property, both real and personal, transferred by a decedent in certain specified cases.” Berkowitz v. Director, Div. of Taxation, 7 N.J. Tax 643, 646 (Tax 1985). Pursuant to N.J.S.A. 54:34-1(c), the State imposes a tax on intangible personal property that is transferred by deed, grant, bargain, sale or gift made in contemplation of death, or intended to take effect in possession or enjoyment at or after death unless such transfer is exempted under N.J.S.A. 54:34-4

(which exempts certain payments from qualified plans that are payable to a surviving spouse or domestic partner).<sup>3</sup>

The related New Jersey Administrative Code Provision states as follows:

The proceeds of a profit sharing or retirement plan payable at the date of death of a decedent to a beneficiary named by the decedent or in accordance with the preference schedule of beneficiaries is deemed to be a transfer which takes effect at or after death and is as such subject to the tax, except for the exemption provided by N.J.A.C. 18:26-6.16.<sup>4</sup>

[N.J.A.C. 18:26-5.9.]

Additionally, N.J.A.C. 18:26-6.15 specifically exempts from inheritance tax, payments made at death under PERS, the Teachers' Pension and Annuity Fund ("TPAF"), and the Police and

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<sup>3</sup> The statute states the following:

The following transfers of property shall be exempt from taxation:  
. . . . The value of any pension, annuity, retirement allowance or return of contributions, regardless of the source, which is a direct result of the decedent's employment under a qualified plan as defined by section 401(a), (b) and (c) or 2039(c) of the Internal Revenue Code, payable to a surviving spouse, or a domestic partner as defined in section 3 of P.L. 2003, c. 246 (C. 26:8A-3), and not otherwise exempted pursuant to this section or other law of the State of New Jersey.

[N.J.S.A. 54:34-4(j).]

<sup>4</sup> The regulation states the following:

An exemption is provided for payments from any pension, annuity, retirement allowance or return of contributions, which is a direct result of the decedent's employment under a qualified plan as defined by section 401(a), (b) and (c) or 2039(c) of the Internal Revenue Code, which is payable to a surviving spouse/surviving civil union partner as defined in P.L. 2006, c. 103 or a surviving domestic partner as defined in section 3 of P.L. 2003, c. 246 (N.J.S.A. 26:8A-3).

[N.J.A.C. 18:26-6.16.]

Firemen's Retirement System ("PFRS"). The code also states that any other State, County or Municipal system that has a tax exemption clause as broad as these three state systems is also exempt.

Pursuant to these provisions, Taxation takes the position that all profit sharing and retirement plans, both public and private, are subject to inheritance tax unless the Legislature has provided an exemption.

**A. New Jersey's Public Retirement Systems**

Currently, New Jersey has seven public retirement systems. Five of these are defined benefit retirement systems, and two are defined contribution plans.

A defined benefit retirement system is one in which the employer promises a specified monthly benefit on retirement, which is predetermined by a formula based on the employee's earnings history, years of service, and age. Employees are vested<sup>5</sup> in these systems only after obtaining ten years of service credit.<sup>6</sup> Although these systems are governed by separate boards of trustees, the day-to-day administration is conducted by the Department of the Treasury, Division of Pensions and Benefits.

The five, current defined benefit systems and the year each was enacted are as follows: PFRS enacted in 1944; PERS enacted in 1954; the State Police Retirement System ("SPRS") enacted in 1965; TPAF reorganized in 1955; and the Judicial Retirement System ("JRS") enacted in 1973.

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<sup>5</sup> Being "vested" means that the employee is guaranteed the right to receive a retirement benefit. If an employee discontinues public service prior to being vested, then the employee is only entitled to a return of his or her contributions, plus interest.

<sup>6</sup> The Judicial Retirement System has a more complex structure dependent upon factors such as age and other aspects of public service.

The remaining two public retirement systems in New Jersey are the ABP, enacted in 1967 and amended in 1969, and the Defined Contribution Retirement Program (“DCRP”),<sup>7</sup> enacted in 2007. While ABP and DCRP provide retirement benefits, life insurance, and disability coverage to eligible employees of New Jersey’s public institutions, they are distinctly different from PERS, TPAF, PFRS, SPRS and JRS. In contrast to those defined benefits plans, ABP and DCRP were crafted as defined contribution plans, in which the State and the employee pay a specified or “defined” amount of money from every paycheck to an outside investment fund for the benefit of the employee. Consequently, under a defined contribution plan, the payout to the employee on retirement is unknown and speculative. Another distinguishing characteristic is that newly hired public employees in both ABP and DCRP are subject to only a one-year delayed vesting in the employer contributions.

For an ABP participant, the retirement benefit amount is based on the value of the account (employer/employee contributions plus investment earnings), age, and the distribution option(s) selected. There is no minimum age or service requirement.<sup>8</sup> A member may elect to receive all or a portion of his/her account in a lump-sum distribution, or as a fixed-term or life annuity. If an ABP participant dies prior to retirement, the total value of the account(s), including all employer contributions and all investment earnings, are payable to the named beneficiary.<sup>9</sup>

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<sup>7</sup> DCRP was established July 1, 2007 under the provisions of Chapter 92, P.L. 2007 and Chapter 103, P.L. 2007, and expanded under the provisions of Chapter 89, P.L. 2008 and Chapter 1, P.L. 2010. DCRP was created for government employees who are ineligible for PERS or whose salary falls within certain minimum or maximum criteria.

<sup>8</sup> Div. of Pensions & Benefits, N.J. Dept. of Treasury, EA-0235-0215, Considerations for Choosing between the Public Employees’ Retirement System or the Alternate Benefit Program, 13 (Feb. 2015), available at <http://www.state.nj.us/treasury/pensions/epbam/exhibits/pdf/ea0235.pdf>.

<sup>9</sup> In contrast, the beneficiary of a PERS participant is only guaranteed to receive the return of the employee’s contributions plus interest. Div. of Pensions & Benefits, N.J. Dept. of Treasury, EA-0235-0215, Considerations for Choosing between the Public Employees’ Retirement System or

ABP was specifically created to help New Jersey's state universities, colleges and county colleges attract and retain faculty. The New Jersey Department of Higher Education recommended the plan on the theory that it would give "state colleges much greater flexibility in attracting first-rate staff members by providing the flexibility of movement that is an essential aspect of our nation's higher education system." See Press Release, Governor Richard J. Hughes, Senate Bill 540 (1967), (Jan. 16, 1968) (discussing ABP bill regarding L. 1967, c. 278).

Further, the 1969 amendments to the ABP highlight the attractive mobility feature of the plan. The statute states the following:

Since the establishment of the alternate benefit programs for the several public institutions of higher education in New Jersey is designed to provide mobility of pension credit from within the academic community in and outside the State, and since it is imperative that eligibility for participation in this program be of uniform application in the several schools, it shall be the responsibility of the Board of Higher Education to establish regulations which shall provide for such uniformity.

[N.J.S.A. 18A:66-172; L. 1969, c. 242, § 6.]

## **B. Exemptions for New Jersey's Public Retirement Systems**

Regarding tax exemptions, all five defined benefit retirement systems have statutory tax-exemption clauses. PERS, the largest state-administered plan, currently has a tax exemption clause that reads as follows:

The right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, any benefit or right accrued or accruing to a person under the provisions of *this act* and the moneys in the various funds created under *this act*, shall be exempt from any State or municipal tax[.]

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the Alternate Benefit Program, 12 (Feb. 2015), available at <http://www.state.nj.us/treasury/pensions/epbam/exhibits/pdf/ea0235.pdf>.



[See N.J.S.A. 43:15A-53 (emphasis added); L. 1954, c. 84, § 53; amended L. 1969, c. 98, § 2.]

The exemption clause above is the result of a June 26, 1969 legislative amendment that affected not only the PERS statute but also the other, then-existing defined benefit retirement systems (TPAF, PFRS, and SPRS). As a result, PERS, PFRS, and SPRS all contain identical statutory clauses exempting the plans from state and local taxation.<sup>10</sup>

The TPAF statute contains an almost identical clause and states:

The right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, any benefit or right accrued or accruing to a person under the provisions of *this article*, and the moneys in the various funds created under *this article*, shall be exempt from any State or municipal tax[.]

[See N.J.S.A. 18A:66-51 (emphasis added). L. 1967, c. 271; amended L. 1969, c. 98, § 1, eff. June 26, 1969.]

Furthermore, although not enacted until 1973, the JRS statute also includes an almost identical exemption clause that states:

The right of a person to a pension, retirement allowance or any benefit or right accrued or accruing to a person under the provisions of *this act* and the moneys in the various funds created under *this act*, shall be exempt from any State or municipal tax[.]

[See N.J.S.A. 43:6A-41 (emphasis added). L. 1973, c. 140, § 41, eff. May 22, 1973; amended by L. 1981, c. 470, § 21, eff. Jan. 19, 1982.]

In contrast, although ABP was enacted in 1967 and amended in 1969, it was not included in the June 26, 1969 amendments to the statutory tax exemption clauses for TPAF, PERS, PFRS, and SPRS. See L. 1969, c. 242 (legislating act for ABP to take effect July 1, 1969, noting as being

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<sup>10</sup> For SPRS, See N.J.S.A. 53:5A-45, L. 1965, c. 89, § 45, eff. July 1, 1965; amended by L. 1969, c. 98, § 4, eff. June 26, 1969. For PFRS, See N.J.S.A. 43:16A-17 L. 1944, c. 255 § 17; amended by L. 1969, c. 98, § 3, eff. June 26, 1969.

approved December 22, 1969). The Legislature also did not include a tax exemption clause in the DCRP statute when it was enacted in 2007.

### **1. Tax Exemption for Alternate Benefit Program**

The Estate acknowledges that the ABP statute contains no specific exemption provision. It contends, however, that the laws enacting the ABP should not be construed in isolation but as part of New Jersey's overall public pension statutory scheme. The Estate advances that when the State's pension laws are read *in pari materia*, they reflect the legislative intent that all state sponsored pension plans are not subject to inheritance tax.

The court disagrees.

It is worth noting that the Tax Court has not confronted the issue of whether the proceeds of a public, defined contribution retirement plan are subject to New Jersey's transfer inheritance tax. Transfer inheritance tax cases have primarily dealt with payments from private annuities or retirement plans. In such cases, taxpayers generally seek the tax-exempt treatment accorded to public annuities and pensions. Thus, there are many instances where the court has referred to public pensions as generally exempt from State and local taxation. See, e.g., Berkowitz, supra, 7 N.J. Tax at 647 (reviewing origins of tax exemption for qualifying private pensions and noting "need for parity in the inheritance tax treatment of private pensions and public pensions") (citing Assembly Bill 1351 (1980)); Gritzmacher v. Director, Div. of Taxation, 2 N.J. Tax 489, 494 (Tax 1981) ("The exemption for death benefits payable in connection with employment by the State or its political subdivisions can be viewed as encouraging such employment in the interest of improved efficiency in the operation of government in New Jersey, while exemption of death benefits arising from federal employment can be seen as a substitute for the Social Security death benefit exemption."); Butzbach v. Director, Div. of Taxation, 3 N.J. Tax 462, 467 (Tax 1981)

(recognizing policy that “exemption for state pensions may be provided as an added compensation of state employment, and that for federal pensions may be viewed as a substitute for Social Security”) (citing Gritzmacher, supra, 2 N.J. Tax at 494).

Further, the Attorney General in the context of New Jersey’s Gross Income Tax Act has also referred to public pensions as generally exempt from taxation. See Attorney General Formal Opinion, No. 26-1976 (Oct. 1, 1976) (“All of the State administered retirement systems contain a specific statutory exemption from State or municipal taxation of the pensions and other benefits or rights accruing to pensioners in those systems.” (citing N.J.S.A. 43:15A-53 (PERS); N.J.S.A. 18A:66-51 (TPAF); N.J.S.A. 53:5A-45 (SPRS); N.J.S.A. 43:16A-17 (PFRS); and N.J.S.A. 43:6A-41 (JRS)).

The court also recognizes that “public pension systems are bound up in the public interest and provide public employees significant rights which are deserving of conscientious protection.” Zigmont v. Board of Treasurers, 91 N.J. 580, 583 (1983). Pension statutes are remedial in character and should be liberally construed and administered in favor of the persons intended to be benefited thereby. See Klumb v. Board of Educ., 199 N.J. 14, 34 (2009). “Pension statutes must also be liberally construed in favor of public employees because they represent deferred compensation for a government employee’s service.” Widdis v. Public Employee Ret. Sys., 238 N.J. Super. 70, 78, (App. Div. 1990).

Notwithstanding the above, the Legislature has provided limited exemptions from the inheritance tax, and the exemptions to the defined benefit retirement programs are specific and well-defined. The clear and unambiguous tax exemption clauses present in the 1969 amendments to PERS, TPAF, SPRS, and PFRS, and in the 1973 JRS statute, leave no doubt that the Legislature intended to give tax-exempt status to the state’s defined benefit retirement programs.

As to the taxability of ABP proceeds, the court’s analysis is guided by the familiar principle that the Division’s interpretation of tax statutes is entitled to a presumption of validity. “Courts have recognized the Director’s expertise in the highly specialized and technical area of taxation.” Aetna Burglar & Fire Alarm Co. v. Director, Div. of Taxation, 16 N.J. Tax 584, 589 (Tax 1997) (citing Metromedia, Inc. v. Director, Div. of Taxation, 97 N.J. 313, 327 (1984)). The scope of judicial review of Taxation’s decision with respect to the imposition of a tax “is limited.” Quest Diagnostics, Inc. v. Director, Div. of Taxation, 387 N.J. Super. 104, 109 (App. Div.), certif. denied, 188 N.J. 577 (2006). “The Supreme Court has directed the courts to accord ‘great respect’ to Taxation’s application of tax statutes, ‘so long as it is not plainly unreasonable.’” PPL Elec. Utilities Corp. v. Director, Div. of Taxation, 28 N.J. Tax 128, 137 (Tax 2014) (citing Metromedia, supra, 97 N.J. at 327); see also GE Solid State, Inc. v. Director, Div. of Taxation, 132 N.J. 298, 306 (1993) (“Generally, courts accord substantial deference to the interpretation an agency gives to a statute that the agency is charged with enforcing.”). “However, judicial deference is not absolute. An administrative agency’s interpretation that is plainly at odds with a statute will not be upheld.” See Oberhand v. Director, Div. of Taxation, 193 N.J. 558, 568 (2008) (citing GE Solid State, supra, 132 N.J. at 306); Advo, Inc. v. Director, Div. of Taxation, 25 N.J. Tax 504, 511 (Tax 2010).

A taxpayer “who claims exemption from a tax must bring himself clearly within the exemption provisions.” L.B.D. Constr., Inc. v. Dir., Div. of Taxation, 8 N.J. Tax 338, 353 (Tax 1986) (citing Container Ring v. Dir., Div. of Taxation, 1 N.J. Tax 203, 208 (Tax 1980), aff’d o.b., 4 N.J. Tax 527 (App. Div. 1981), certif. denied, 87 N.J. 416 (1981)). As the Appellate Division recently observed, statutory exemptions from taxation should be strictly construed against those invoking the exemption, in order to assure that the public tax burden is to be borne fairly and

equitably. The court's role is to effectuate legislative intent, not alter it. See Lugano v. Director, Div. of Taxation, 28 N.J. Tax 562, 566 (App. Div. 2015).

The court is influenced by the slight difference between the exemption clause under the TPAF statute and the clauses under PFRS, PERS, SPRS, and JRS. As emphasized in the exemption clauses quoted previously, only the TPAF clause refers to its provisions as falling under “*this article*” whereas the statutory language under PFRS, PERS, SPRS, and JRS all refer to their provisions as falling under “*this act*.” This difference is significant because ABP falls under the same title as TPAF, N.J.S.A. 18A:66. Thus, the use of “*this article*” rather than “*this act*” in the TPAF exemption clause can be read as the Legislature's intent to narrow that clause so it would not be mistakenly interpreted as applying to ABP. In further support of this interpretation, in 2008, the Legislature also did not include a tax-exemption clause when it enacted the DCRP—the State's other defined contribution retirement plan.

Equally persuasive is the Legislature's decision regarding the 1995 amendments to N.J.S.A. 18A:66-116, which governs exemptions to Article 2 of Chapter 66, which applies to the Pension Fund of School District Employees in First Class Counties.<sup>11</sup> Originally, the amendment read “The right of a person to a pension, annuity, or a retirement allowance... shall be exempt from *any State or municipal tax and from* levy and sale...” When finally enacting the amendment, the Legislature struck out the phrase “any State or municipal tax and from” thereby denying those pension participants tax exemption. See N.J.S.A. 18A:66-116, L. 1967, c. 271; amended L. 1995, c. 240, §9.

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<sup>11</sup> Article 2 of Chapter 66 of Title 18A permits the employees of boards of education in school districts in counties of the first class to associate themselves as a corporation for the purpose of providing and obtaining a fund for their retirement upon pension.

The court also rejects the Estate’s premise that there is a “common and well established understanding by the Legislature and the Executive Branch that all state-administered pension plans are exempt from state inheritance taxation.” There is no ambiguity in the law. The Legislature specifically and clearly intended to distinguish between the defined benefit plans and ABP when enacting the statutory tax-exemption clauses. Plaintiff bears the burden of satisfying the requirements for entitlement to the exemption, Advance Housing, Inc. v. Township of Teaneck, 215 N.J. 549, 566, (2013), and it has not carried its burden.

**2. Equal Protection Clause and Inheritance Tax**

The Estate argues that imposing inheritance tax on ABP benefits, while not doing so with regard to PERS, TPAF, PFRS, SPRS and JRS benefits, violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, as well as the “unalienable rights” provision of the New Jersey Constitution of 1947.<sup>12</sup> In the alternative, it argues that Taxation does not have a consistent record of enforcing the inheritance tax on ABP entitlements.

The issue of equal protection with respect to retirement benefits was recently addressed by the Tax Court in Lugano v. Director, Division of Taxation, 28 N.J. Tax 29 (Tax 2014), wherein the court stated the rule as follows:

At the outset, we note that the “power to pass upon a constitutional issue is not to be exercised lightly.” Weisbrod v. Township of Springfield, 1 N.J. Tax 583, 590 (Tax 1980). “(I)nferior courts should assume an act of the Legislature to be constitutional unless it so clearly conflicts with the Constitution as to leave no reasonable doubt of its defectiveness.” State v. Cannarozzi, 77 N.J. Super. 236, 239, 186 A.2d 113 (App. Div. 1962).

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<sup>12</sup> U.S. Const. amend. XIV, sec. 1 (“No state shall . . . deny to any person within its jurisdiction the equal protections of the laws.”). The “unalienable rights” provision of the New Jersey Constitution, provides an implied right to equal protection of the laws. N.J. Const. art. I, para. 1; See Greenberg v. Kimmelman, 99 N.J. 552, 568 (1985).

Every possible presumption in favor of the constitutionality of legislative action must be extended by this court. See Holster v. Board of Trustees, 59 N.J. 60, 66, 279 A.2d 798 (1971). Hence, any party who attacks a statute must demonstrate that “there is no reasonable basis for sustaining it.” McCrane, supra, 119 N.J. Super. at 476, 292 A.2d 580. Only those legislative acts that are “clearly repugnant to the Constitution” should be invalidated. Newark Superior Officers, supra, 98 N.J. at 222, 486 A.2d [58] 305; accord State v. Muhammad, 145 N.J. 23, 41, 678 A.2d 164 (1996). Where a statute’s constitutionality is “fairly debatable, courts will uphold” the law. Newark Superior Officers, supra, 98 N.J. at 227, 486 A.2d 305.

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“Where ‘neither ‘fundamental’ rights nor ‘suspect’ criteria for classification are implicated . . . plaintiffs have the burden of demonstrating that the classification herein lacks a rational basis.” Taxpayers Ass’n of Weymouth Twp. v. Township of Weymouth, 90 N.J. 6, 39-40 (1976). “Legislatures have wide discretion in passing laws that have the inevitable effect of treating some people differently from others and legislative classifications are valid unless they bear no rational relationship to a permissible state objective.” Piscataway Twp. Bd. of Ed. v. Caffiero, 86 N.J. 308, 324, 431 A.2d 799 (1981).

[Id.]

As set forth in both the Gritzmacher and Butzbach decisions, the rational basis for treating public pensions differently than private pensions by virtue of a tax exemption, can be found in the State’s interest in encouraging long-term public employment with the purpose of achieving improved efficiency in the operation of government.

While it is true that the ABP pension is provided by the State as compensation for public employment, the same rationale for the Legislature’s granting of a tax exemption for the defined benefit pension programs does not apply. Unlike PERS, TPAF, PFRS, SPRS and JRS, ABP does not require long-term public employment in New Jersey for vesting purposes. Additionally, an ABP pensioner has the right to *all* employer and employee contributions as soon as he or she is enrolled in the ABP system. The defined benefit pensioner must first vest in the system to be

entitled to the State's contributions, and even then is subject to additional limitations and conditions on entitlement to these State contributions. At its core, ABP allows short-term employment for vesting purposes, and flexibility between public and private employment, both within and outside of New Jersey, that is not available to the PERS, TPAF, PFRS, SPRS or JRS pensioner.

Another distinction between the programs is that the PERS, TPAF, PFRS, SPRS and JRS pensioner must make a one-time, irrevocable decision at the time of retirement that determines the manner in which his or her pension will be calculated and disbursed. Once pension payments commence, they are disbursed by the State in accordance with the pension regulations. These payments are also subject to federal income tax, as well as New Jersey state income tax if residence is in New Jersey. The ABP pensioner, however, has complete control over his or her pension including the frequency and amount of any withdrawals. Thus, the ABP pensioner can manipulate income tax consequences until such time as funds are withdrawn.

To summarize, the rational basis for not enacting tax exemptions for the ABP is found in the vesting differences between the two retirement systems. It is the ABP participant's ability and flexibility to move between public and private employment in higher education, both within and beyond the State, that distinguishes it from State's defined benefit programs.

Regarding the Estate's argument that Taxation cannot point to a consistent record of enforcing the inheritance tax on ABP retirement proceeds, the court is unpersuaded. Although Taxation produced only three letters regarding enforcement, in the absence of any evidence to the contrary, it would be highly speculative to jump to the assumption or conclusion that Taxation was exempting some ABP benefits and not others. To the contrary, the range of dates on the letters



produced by Taxation (1992, 1997, and 2006), while few in number, represent a long standing and consistent pattern by Taxation of imposing inheritance tax on ABP retirement proceeds.

**C. Bargain Sale: 2007 Lincoln Town Car**

The final issue in Plaintiff's Complaint is a challenge to Taxation's increase in the value of decedent's 2007 Lincoln Town Car from \$5,000 to \$25,000. The Estate argues that the reduced value was additional compensation to the caretaker, for which a compensation deduction could be taken. Taxation denied this deduction on the basis that the caretaker was already reasonably compensated for any services rendered while decedent was alive thereby nullifying any expectation of compensation. Furthermore, the sale was to the caretaker's husband, not the caretaker.

Taxation's assessment is presumed to be correct. As stated by Judge Menyuk in Yilmaz, Inc. v. Director, Division of Taxation:

Moreover, it is well settled that the Director's assessment is presumed to be correct. The plaintiff has the burden of proving the contrary. The "naked assertions" of the taxpayer, without supporting records or documentation, are insufficient to rebut the presumption that the Director's assessment is correct. TAS Lakewood, Inc. v. Director, Div. of Taxation, 19 N.J. Tax 131, 140 (2000); Ridolfi, supra, 1 N.J. Tax at 202-03; see also Atlantic City Transp. Co., supra, 12 N.J. at 146, 95 A.2d 895 (the taxpayer did not overcome the presumption that the Director's assessment was correct where it produced no evidence to support its claim that it did not operate its lines over a public street).

[22 N.J. Tax 204, 231-232 (Tax 2005) (internal citations omitted).]

The Estate did not submit any evidence in support of its position on this issue. It has failed to meet its burden of proof and accordingly, Taxation's assessment that the value of the vehicle is \$25,000 is upheld.

#### **IV. Conclusion**

New Jersey's ABP retirement proceeds are subject to New Jersey Inheritance Tax pursuant to N.J.S.A. 54:34-1(c). The Legislature intended to provide tax exemptions only to the State's defined benefit retirement programs, PERS, TPAF, PFRS, SPRS and JRS, as is reflected by the specific exemption language in those statutes. Plaintiff has failed to meet its burden of proof to overcome the presumption that Taxation's assessment is correct, and the court affirms the final determination in its entirety.