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DARRELL LEGER and NANCY LEGER, Plaintiffs, v. DIRECTOR, DIVISION OF TAXATION, Defendant.	TAX COURT OF NEW JERSEY DOCKET NO. 007706-2011

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Decided: September 26, 2016

Joseph G. Buro for plaintiffs (Zipp, Tannenbaum & Caccavelli, LLC, attorneys).

Ramanjit K. Chawla for defendant Director, Division of Taxation (Christopher S. Porrino, Attorney General of New Jersey, attorney).

DeALMEIDA, P.J.T.C.

This opinion concerns a 2009 amendment to N.J.S.A. 54A:6-11 extending the New Jersey gross income tax for the first time in the State's history to certain New Jersey lottery winnings. In opinions issued today in two companion cases, Milligan v. Director, Div. of Taxation, ___ N.J. Tax ___ (Tax 2016), and Harrington v. Director, Div. of Taxation, ___ N.J. ___ (Tax 2016), the court held that the State is precluded by the square corners doctrine from imposing gross income tax on lottery winnings from prizes awarded prior to the June 29, 2009 enactment of the amendment.

The holdings in Milligan and Harrington apply with equal force to the present case, in which plaintiffs held the winning ticket for the $3.5 million New Jersey lottery Pick 6 Lotto prize

awarded on December 29, 2008. Under the square corner doctrine, the State must uphold its promise to plaintiffs – made in marketing materials, lottery rules, and the contract created by the sale of the winning ticket – that their lottery winnings would be free from State income tax. The retroactive assessment of tax on those winnings would give the State an untoward advantage in its financial transaction with plaintiffs. Thus, plaintiffs are entitled to the award of summary judgment in their favor on this point alone.

Plaintiffs, however, seek summary judgment on an additional claim: that assessment of gross income tax on their lottery winnings would constitute a manifest injustice under the holding in Oberhand v. Director, Division of Taxation, 193 N.J. 558 (2008). For the reasons stated more fully below, the court agrees with plaintiffs and concludes that it would be manifestly unjust to subject their lottery winnings to gross income tax retroactively. Plaintiffs produced credible evidence in their motion papers and at an evidentiary hearing that they relied to their detriment on the fact that N.J.S.A. 54A:6-11 excluded New Jersey lottery winnings from gross income tax when they made numerous financial decisions at the time that they collected their prize. The retroactive application of the tax to their winnings would upend plaintiffs' reasonable reliance on the State's tax laws and the representation of State officials at the time they engaged in financial planning.[1]

I. Findings of Fact and Procedural History

Plaintiffs Darrell Leger and Nancy Leger are a married couple who reside in New Jersey. They own a small business in Somerset County. In December 2008, Mr. Leger purchased a New Jersey lottery ticket at a local convenience story for the December 29, 2008 drawing. Mr. Leger,

[1] The court notes that the taxpayers in Milligan, supra, and Harrington, supra, also raised claims under the manifest injustice doctrine. Because the factual bases of those claims were not fully explored during discovery, the court reserved decision on that aspect of their Complaints.

who was preoccupied at the time with the health of his father, did not watch the drawing or check televised news reports or newspapers to determine if he had the winning ticket.

On an unspecified date in early 2009, Mr. Leger's mother checked the lottery ticket and determined that her son had won the $3.5 million prize from the December 29, 2008 drawing. Because of his father's deteriorating health, Mr. Leger did not immediately claim his prize. He instead put the winning ticket in the safe at the jewelry story he owned.

After suffering the loss of his father on March 31, 2009, Mr. Leger initiated the process of claiming his lottery prize. On April 26, 2009, Mr. Leger called his longtime accountant, Michael Vernoia, for advice. Mr. Vernoia, who had for several years completed plaintiffs' tax returns and provided accounting services for their business, provided credible testimony regarding the steps he took to advise plaintiffs on their options.

Mr. Leger and Mr. Vernoia met a few hours after the initial telephone call. Mr. Leger was informed that he had the option of accepting an immediate single lump sum payment of $2,544,745 or agreeing to annual annuity payments over many years totaling $3.5 million. The two reviewed plaintiffs' financial affairs. The Legers had a mortgage on their residence. The couple also had debts associated with the opening and operation of their business and consumer credit card debt.

According to Mr. Vernoia, it was evident to him that the lump sum payment option was in plaintiffs' financial interest, given their existing debt. He prepared a mockup of a federal and New Jersey income tax return for tax year 2009, assuming that plaintiffs elected the lump sum payment. The New Jersey return did not include an assessment of gross income tax on plaintiffs' lottery winnings. Mr. Vernoia was aware of N.J.S.A. 54A:6-11, which at the time that he met with Mr. Leger excluded New Jersey lottery winnings from gross income tax.

Mr. Leger too had knowledge of the tax exempt status of New Jersey lottery winnings. Although he could not recall seeing a representation to this effect at the convenience store on the day that he purchased his winning ticket, Mr. Leger did recall seeing television commercials in which viewers were told that New Jersey lottery winnings were not subject to State income tax. He also recalled having spent time as a youth at a liquor store operated by his uncle at which the tax exemption for New Jersey lottery winnings was a frequent topic of discussion with customers.

The accountant's mock up returns for the lump sum payment show a federal income tax liability of $864,462. This left plaintiffs with approximately $1.7 million from the $2,544,745 lump sum payment. Mr. Vernoia advised Mr. Leger to take this option, as it would allow plaintiffs to satisfy all of their outstanding business and consumer credit card debts, to make a significant reduction in their mortgage, to invest in their business, and to invest a significant amount of money for the family's future needs.

Following their accountant's advice, plaintiffs paid off their debts associated with the opening and operation of their business, as well as their consumer credit card debts. The couple also paid off a significant portion of their mortgage, made a gift of cash to each of their siblings, and contributed money to their church. The couple bought out a partner at their jewelry business and paid for a renovation of the store. They also purchased a two-family residence as an investment property. Plaintiffs invested the remaining funds, approximately $300,000, in a money market account.[2]

[2] In an effort to protect plaintiffs' financial information, the court has not detailed the specific amounts attributed to the various transactions undertaken after receipt of the lottery winnings. The amount invested in the money market account is provided because, as is explained below, the amount is relevant to the court's analysis.

On May 7, 2009, William T. Jourdain, the Acting Executive Director of the State Lottery, gave plaintiffs a check for $1,908,558 with a letter explaining in relevant part:

> On behalf of Governor Jon S. Corzine and the New Jersey Lottery Commission, I wish to extend to you our congratulations upon your winning the top prize in the Pick-6 Lotto Drawing held on December 29, 2008.
>
> The total amount of your cash prize is $2,544,745.00. The check which you receive today will be in the net amount of $1,908,558.00 which is your cash prize of $2,544,745.00 less twenty-five percent (25%) federal withholding tax of $636,187.00 which the Lottery is required to deduct in accordance with the Jobs and Growth Tax Relief Reconciliation Act of 2003.
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> Please be informed that the twenty-five (25%) federal tax deduction may not be sufficient to satisfy your federal tax obligation. Therefore, I recommend that you contact your local office of the Internal Revenue Service to assist you, or seek legal of financial advice as soon as possible.

Executive Director Jourdain's letter does not mention a State income tax obligation arising from plaintiffs' lottery winnings.

In 2009, the Legislature, as part of the annual State budget process, identified the need to raise over $1 billion in revenue. As part of this effort, various bills intended to raise revenue from New Jersey lottery winnings were introduced in the Legislature. On June 11, 2009, a little over a month after plaintiffs claimed their lottery prize, A4102 was introduced in the State Legislature. That bill, amending N.J.S.A. 54A:6-11 to provide that New Jersey Lottery "winnings from a prize in an amount exceeding $10,000 shall be included in gross income" subject to tax, was enacted into law on June 29, 2009. L. 2009, c. 69. According to L. 2009, c. 69, §5, the amendment to

N.J.S.A. 54A:6-11 "shall take effect immediately and apply to taxable years beginning on or after January 1, 2009."[3]

After the amendment to N.J.S.A. 54A:6-11, Mr. Vernoia became aware of the change in law. He contacted Mr. Leger and informed him that the winnings from the December 29, 2008 prize would be subject to New Jersey gross income tax because Mr. Leger had not claimed his prize until May of 2009. Mr. Vernoia calculated plaintiffs' State income tax obligation on the winnings to be approximately $252,000. He strongly advised plaintiffs to make the payment to the State before December 31, 2009 to ensure that they would be entitled to an approximately $252,000 deduction on their federal income tax returns for that year. As a result of this deduction, their federal tax liability was reduced by approximately $90,000 for 2009.[4]

Mr. Leger withdrew approximately $250,000 from the couple's money market account in order to make the New Jersey gross income tax payment by December 31, 2009. The couple ultimately was required to pay federal and State income tax on the portion of the withdrawal considered to be capital gains. After the withdrawal, the couple's money market account was left with between $40,000 and $50,000. Thus, as a result of the retroactive assessment of gross income

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[3] When N.J.S.A. 54A:6-11 was amended to extend to gross income tax to certain lottery winnings, the Legislature also enacted legislation temporarily increasing gross income tax rates for taxpayers with taxable income exceeding $400,000 and temporarily suspending property tax deductions for certain taxpayers with income exceeding $150,000. See L. 2009, c. 69. A Fiscal Note estimated a total of more than $1 billion in new revenue from the three measures. The first bill proposing to extend the gross income tax to New Jersey lottery winnings, A-3830, was introduced in the Assembly on March 9, 2009, before plaintiffs claimed their lottery prize. That bill, which would have applied the tax to "lottery winnings from multistate games in which the New Jersey Lottery participates," would not have applied to plaintiffs' prize.

[4] The federal government allows taxpayers to deduct State income taxes paid on income subject to federal tax. 26 U.S.C.A. §164. Any overpayment of federal taxes by plaintiffs as a result of federal withholding from their lottery prize would result in a refund during tax year 2010. That refund, in some circumstances, would itself trigger an income tax liability for tax year 2010.

tax on plaintiffs' lottery winnings, the fund they created on the advice of their accountant to provide for their family's future needs was decimated.

Mr. Leger credibly testified that had he been advised by his accountant that the couple would have an approximately $250,000 New Jersey income tax liability on their lottery winnings, they would have made different financial decisions, as one of their primary objectives was to invest $250,000 to $300,000 in an account for their family's continuing financial needs. Thus, plaintiffs argue, they would have adjusted their post-winning financial decisions by either not paying off all of their business debts, not renovating their jewelry store, not giving family members as generous or any gifts, or not purchasing an investment rental property at the price they paid, if at all. Mr. Leger also credibly testified that he and his accountant may have considered the annuity payment option, which would have resulted in more money over time, and put plaintiffs in a lower State and federal income tax bracket for 2009.[5]

On April 9, 2010, plaintiffs filed a joint New Jersey gross income tax return for tax year 2009. The return included in taxable income the lottery winnings received by plaintiffs in 2009.

On June 5, 2010, plaintiffs filed an amended New Jersey gross income tax return, excluding the lottery winnings they received in 2009. The amended return requested a refund of $252,454, the amount of tax assessed on their lottery winnings.

By letter dated July 9, 2010, the Division of Taxation disallowed plaintiffs' amended income tax return and refund claim for tax year 2009.

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[5] Plaintiffs do not allege that had they been aware that the State would retroactively assess income tax on New Jersey lottery winnings, Mr. Leger would not have purchased his winning lottery ticket. Their manifest injustice claim rests on the financial decisions plaintiffs made after they became aware that they had won the lottery prize.

On or about October 7, 2010, plaintiffs submitted a Notice of Protest and Request for Hearing with the Division of Taxation. An administrative hearing was held at the Division of Taxation on or about January 12, 2011.

On March 16, 2011, the Director, Division of Taxation rejected plaintiffs' administrative appeal and issued a Final Determination upholding the denial of plaintiffs' refund request for tax year 2009.

On June 14, 2011, plaintiffs filed a Complaint in this court challenging the Director's March 16, 2011 Final Determination.

On February 14, 2014, the parties cross-moved for summary judgment in their favor.

After hearing oral argument on the cross-motions, the court concluded that disputes existed with respect to material facts. Resolution of the cross-motions was held in abeyance to permit the court to hold an evidentiary hearing.

An evidentiary hearing was subsequently held. Mr. Leger and his accountant testified with respect to plaintiffs' manifest injustice claims.

Additional briefing by the parties followed the evidentiary hearing.

II. Conclusions of Law

Summary judgment should be granted where "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2. In Brill v. Guardian Life Ins. Co., 142 N.J. 520, 523 (1995), our Supreme Court established the standard for summary judgment as follows:

> [W]hen deciding a motion for summary judgment under Rule 4:46-2, the determination whether there exists a genuine issue with respect to a material fact challenged requires the motion judge to consider whether the competent evidential materials presented,

> when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.

The court finds that there are sufficient undisputed material facts in the motion record to determine the whether the assessment of gross income tax on the lottery winnings plaintiffs received in 2009 constitutes a manifest injustice and should be reversed.

A. Whether the Amendment to N.J.S.A. 54A:6-11 Applies to The Lottery Winnings Received by Plaintiffs in 2009.

As a threshold matter, plaintiffs challenge the Director, Division of Taxation's interpretation of the amendment to N.J.S.A. 54A6-11. They argue that the amendment was not intended to apply to winnings from lottery prizes awarded prior to January 1, 2009, even if received by the taxpayers after January 1, 2009. In addition, plaintiffs argue that, even if the statute applies to lottery winnings from prizes awarded prior to January 1, 2009, the Legislature did not intend to extend the tax to lottery winnings received prior to the June 29, 2009 enactment of the amendment.

In Milligan, supra, the court analyzed at length the Taxation Director's interpretation of the amendment to N.J.S.A. 54A:6-11, the text of the statute, and its legislative history. The court concluded that the amendment's legislative history reveals no credible evidence of Legislative intent with respect to the treatment for income tax purposes of lottery winnings received in 2009 and later years from a lottery prize won prior to January 1, 2009. The court ultimately concluded that the Director's interpretation of the statute, applying the tax to all lottery winnings received on or after January 1, 2009, regardless of the prize drawing date, is not "plainly at odds with" the statute, see ADVO, Inc. v. Director, Div. of Taxation, 25 N.J. Tax 504, 511 (Tax 2010), and must be upheld.

The court incorporates its statutory interpretation analysis and holding in Milligan to the claims raised in this matter as if fully set forth herein. Plaintiffs' proffered interpretation of the amendment to N.J.S.A. 54A:6-11 might well be viewed as reasonable. Nothing in the plain language of the statute or its legislative history suggests that limitation of the extension of the income tax to winnings from lottery prizes awarded on or after June 29, 2009, or to winnings received on or after June 29, 2009, regardless of the prize award date, is contrary to legislative intent. Yet, as the court held in Milligan, it is the Taxation Director who has the statutory authority and duty to interpret the State's tax statutes. His interpretation of the amendment to N.J.S.A. 54A:6-11 – that the tax applies to all New Jersey lottery winnings received on or after January 1, 2009, regardless of the prize drawing date – is entitled to judicial deference. That holding applies here.

B. Whether Taxation of Plaintiffs' Lottery Winnings Constitutes a Manifest Injustice.

Having determined that the Director's interpretation of the amendment to N.J.S.A. 54A:6-11 must be upheld, the court is confronted with the question of whether that interpretation of the statute, when applied to plaintiffs, constitutes a manifest injustice and must be reversed.[6]

The court's manifest injustice analysis is controlled by the Supreme Court's holding in Oberhand, supra. In that case, Congress, effective January 1, 2002, amended federal law to increase the amount of assets that could pass free of estate tax and to phase out the state death tax credit, which is the source of New Jersey's estate tax revenue. 193 N.J. at 562. To avoid the loss of revenue as a result of the change in federal law, in July 2002, the Legislature amended the New

[6] The court incorporates its analysis and holdings in Milligan, supra, and Harrington, supra, herein and concludes that the assessment of gross income tax on plaintiffs' lottery winnings violates the square corners doctrine. This conclusion is an independent basis for reversing the Director's March 16, 2011 Final Determination denying plaintiffs' refund claim for tax year 2009.

Jersey estate tax statutes to provide that New Jersey estate tax would continue to be calculated as it was on December 31, 2001, prior to the federal amendment. The statute was made retroactive to January 1, 2002. Ibid.

The two decedents in Oberhand executed wills prior to January 1, 2002. The testamentary documents were drafted with the express intention of avoiding New Jersey tax by allowing for the distribution to a family trust of the maximum amount that could pass without federal tax. The remainder was placed in a marital trust. Id. at 563-64. Both decedents died after January 1, 2002, but prior to the adoption of the July amendment to the New Jersey estate tax statute that was retroactive to January 1, 2002. Ibid. At the time that the two decedents drafted their wills and at the time that they died, no New Jersey estate tax would have been due on their estates. Id. at 565. As a result of the retroactive amendment to the estate tax, however, the Director assessed a significant amount of estate tax against each of the decedent's estates. Id. at 566.

The executors of the two estates challenged in this court the Director's assessment of estate tax. This court held that retroactive application of the amendment to the estate tax statute would result in a manifest injustice and reversed the Director's assessment of tax. Oberhand v. Director, Div. of Taxation, 22 N.J. Tax 55 (Tax 2005). The Appellate Division reversed this court, holding that the manifest injustice doctrine does not apply to retroactive tax statutes. Oberhand v. Director, Div. of Taxation, 388 N.J. Super. 239 (App. Div. 2006). The Supreme Court thereafter granted certification. Oberhand v. Director, Div. of Taxation, 190 N.J. 255 (2007).

In a 4-2 decision (Chief Justice Rabner did not participate), the Supreme Court held that retroactive application of the amendment to the estate tax statute would constitute a manifest injustice. Oberhand v. Director, Div. of Taxation, 193 N.J. 558 (2008). Three Justices, in an opinion by Justice Wallace, explained that the manifest injustice doctrine is "'designed to prevent

unfair results that do not necessarily violate any constitutional provision.'" Id. at 572 (quoting State Troopers Fraternal Ass'n v. State, 149 N.J. 38, 58 (1997)). Those Justices weighed the competing factors of the public interest in the retroactive application of the amended statute, the affected parties' reliance on the previous law, and the consequences of that reliance. Id. at 572. After consideration of those factors, the three Justices concluded that "it would be harsh and unfair to apply the [a]mendment retroactively." Id. at 574.

The Justices explained that

> the decedents relied on previous law, and that reliance was patently reasonable. When the decedents executed their Wills and at the time that each died, the trust formulae were framed in such a fashion that no federal or state taxes would be due. It is clear that if the decedents had died on or before December 31, 2001, there would not have been any federal or state estate taxes due. It was solely due to the six-month retroactive application of the Amendment, coupled with the federal estate tax changes and the trust formulae, that the Director imposed State estate tax assessments for the estates. Clearly, the decedents did not have an opportunity to amend their estate plans to avoid the adverse estate consequences. The reliance on the previous law by plaintiffs is obvious and clearly to their detriment.
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> [Id. at 573-74.]

Justice Albin concurred with the result. He opined, however, that retroactive application of the amendment to the estate tax statute violated Article I, Paragraph 1 of the State Constitution. According to Justice Albin,

> [f]or the reasons so powerfully and persuasively stated by Justice Wallace in the plurality opinion . . . I agree that the retroactive application of N.J.S.A. 54:38-1 to the . . . estates is manifestly unjust – not because, as the plurality believes, the statute violates common law principles of equity, but rather because it violates Article I, Paragraph 1 of our State Constitution, which guarantees fundamental fairness and due process of law.
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> [Id. at 575 (Albin, J., concurring).]

Justices Long and Hoens dissented. Those Justices offered the opinion that the manifest injustice doctrine "can only apply to the interpretation of a statute but cannot affect the outcome where a clear statute requires retroactivity." Id. at 580. (Long, J., dissenting). Because the Court had determined that the amendment to the estate tax statute plainly called for its retroactive application, the dissenting Justices held that relief was not available under the manifest injustice doctrine. Id. at 582-83.

Although no opinion in Oberhand was joined by four Justices, a majority of the Court held that the retroactive application of a tax statute can be precluded by judicial action in circumstances where the retroactive assessment of the tax is manifestly unjust – whether under a common law notion of fairness or as a matter of State Constitutional principle. This court has no doubt that the present matter arises from just such circumstances.

An evidentiary hearing produced credible evidence that Mr. Leger sought professional advice from his accountant shortly after he learned that he held a winning lottery ticket. Both Mr. Leger and his accountant were aware of the fact that, at that time, N.J.S.A. 54A:6-11 excluded New Jersey lottery winnings from gross income tax. Plaintiffs' accountant created mock up tax returns to calculate plaintiffs' tax liabilities as a result of their receipt of lottery winnings in 2009. Those mock up returns did not include any State income tax liability attributable to the lottery winnings.

Plaintiffs accepted the professional advice of their accountant to accept the lump sum payment and to make financial decisions in such a way as to retain a pot of between $250,000 and $300,000 to be placed in a money market account to provide for the future financial needs of their family. Based on that advice, the couple made a number of significant financial decisions. They paid down personal and business debts, reduced the mortgage on their home, invested in the

renovation of their business, made significant gifts to family members and their church, decided to buy out a business partner, and purchased an investment rental property. They calibrated their decisions to allow for a reserve of approximately $300,000, which they deposited in a money market account for future financial needs.

A few months later, they were confronted with the news that the Legislature had amended N.J.S.A. 54A:6-11 retroactively to tax New Jersey lottery winnings received on or after January 1, 2009. The resulting tax bill – $252,454 – effectively wiped out plaintiffs' nest egg. They were compelled to turn over to the State Treasurer the very reserve of funds they created on the advice of their accountant based on State law as it existed when they purchased their ticket, won the lottery, and collected their prize winnings. It is hard to imagine a more manifestly unjust result.

Plaintiffs' accountant testified that he would have given different advice to plaintiffs had he been aware that the State would seek retroactively to tax the Legers' lottery winnings. He certainly would have been aware of the $252,454 gross income tax liability, given that he created a mock up tax return for the couple before giving them advice on how to manage their winnings. The accountant maintained that he would not have altered his opinion that plaintiffs should reserve between $250,000 and $300,000 in a money market account for their family's future financial needs. He would, however, have advised plaintiffs differently with respect to the payment of their debts, investment in their business, reduction of their home mortgage, and gift giving in order to have a remainder of funds sufficient to provide for future needs. Mr. Leger credibly testified that he would have followed his accountant's advice, given their long-term professional relationship.

However, as was the case in Oberhand, plaintiffs "did not have an opportunity to . . . avoid the adverse . . . tax consequences" of the retroactive amendment. Id. at 574. Many of the financial decisions plaintiffs made based on the law as it existed when they collected their lottery winnings

could not easily be reversed, if they could be reversed at all. One could hardly expect plaintiffs to demand that their church and relatives return the gifts plaintiffs gave after collecting their lottery winnings. Nor would the recipients of those gifts have any legal obligation to comply with such a demand. Plaintiffs could not "undo" the buyout of their business partner or return their business to an un-renovated state and demand a refund from the contractors who provided services to them. While plaintiffs could, theoretically, run up their business and personal debts and increase the size of the mortgage on their home to refill their money market account, a court could hardly conclude that this is a preferable or just outcome here.

The manifest nature of the injustice in this case is highlighted by many of the factors underlying the court's square corners analysis in Milligan, supra, and Harrington, supra. Unlike in Oberhand, where the State had no interaction with the taxpayers relative to their financial activities, here State officials actively induced the purchase of New Jersey lottery tickets with public representations that lottery winnings are not subject to State income tax. Plaintiffs relied on those representations when making financial decisions after they became aware that they had won the December 29, 2008 Pick 6 Lotto drawing. This is a step beyond mere reliance on existing law – the facts in Oberhand – and brings this case further across the line into the realm of unjust results.

The court recognizes the important public purpose served by the enactment of the revenue raising measures of which the amendment to N.J.S.A. 54A:6-11 was a part. There can be little doubt that the government's reaction to a fiscal crisis is of paramount public concern. Yet, the record raises doubt that the Legislature even intended for the amendment to N.J.S.A. 54A:6-11 to apply to winnings from lottery prizes awarded prior to the June 29, 2009 enactment of statute.

And, if such an intention was present, it is clear that the anticipated revenue from the amendment was minor compared to the other tax raising measure adopted that day.

As explained in Milligan, supra,

> the Office of Legislative Services ("OLS") is an agency of the Legislature established "to aid and assist the Legislature in performing its functions . . . ." N.J.S.A. 52:11-55. Among its statutory objectives, the OLS is to "[p]rovide, upon request, legal, fiscal, research, information and administrative services and assistance for the Legislature, its officers, committees, commissions, members and staff." N.J.S.A. 52:11-58(b)(1). Martin Poethke, an OLS fiscal analyst, prepared a Fiscal Note to accompany A4102, the bill which ultimately was enacted as the amendment to N.J.S.A. 54A:6-11. As noted above, in addition to the lottery prize amendment, A4102 included other amendments to the Gross Income Tax Act designed to raise revenue. The Fiscal Note includes an estimate that A4102, if enacted "would increase State gross income tax revenues by $1,011,000,000 in Fiscal Year 2010," including "$8 million from the application of the gross income tax to certain lottery prize winnings, which will recur annually." Mr. Poethke testified that he did not perform an independent corroboration of the amount attributable to the taxation of lottery winnings, which was considered de minimus compared to the over $1 billion projected to be raised by the other provisions of A4102.
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> [___ N.J. Tax at ___ (slip op. at ___).]

Of course, the $8 million of revenue anticipated from the amendment to N.J.S.A. 54A:6-11 includes revenue from lottery prizes awarded after June 29, 2009, which would not be retroactive and are not challenged in this or any pending case. The portion of the $8 million in anticipated revenue attributable to winnings from lottery prizes awarded prior to June 29, 2009 is not precisely identified in the legislative history, but would certainly be less than $8 million. The court

concludes that any public benefit from the retroactive application of the amendment to N.J.S.A. 54A:6-11 would be outweighed by the unjust nature of the consequences for plaintiffs.[7]

In light of these findings of fact and conclusions of law, this court will enter an Order granting plaintiffs' motion for summary judgment, denying the Director's cross-motion for summary judgment, and reversing the March 16, 2011 Final Determination of the Director.

[7] The court notes that the Director acknowledges that had Mr. Leger claimed his lump sum lottery winnings on December 29, 2008, the day of the drawing, or on either of the following two days, December 30, 2008 and December 31, 2008, both of which were business days, the winnings would not be subject to gross income tax. The court does not consider this fact in reaching its decision under the manifest injustice doctrine, as Mr. Leger did not become aware that he held the winning ticket until after January 1, 2009.