

NOT FOR PUBLICATION WITHOUT APPROVAL OF
THE TAX COURT COMMITTEE ON OPINIONS

	TAX COURT OF NEW JERSEY
	DOCKET NO: 017739-2011,
-----	017743-2011, 017745-2011,
POSITIVE HEALTH CARE, INC.	: 017747-2011, 017750-2011,
	: 017755-2011, 017758-2011,
Plaintiff,	: 017760-2011, 017764-2011,
	: 017765-2011, 017768-2011,
v.	: 017770-2011
	:
CITY OF NEWARK,	: -----
Defendant.	: -----

Approved for Publication
In the New Jersey
Tax Court Reports

Decided: January 27, 2016

Mary Ann McField for Plaintiff.

Jacek Zapotoczny for Defendant (Aaron M. Wilson and Lisa J. Jurick, on the brief; Nowell, P.A., attorneys).

BRENNAN, J.T.C.

Taxpayer moves to amend the above complaints pursuant to R. 4:9-1 to add appeals for tax years 2010, 2012, 2013 and 2014. Taxpayer asserts that it is not subject to New Jersey's statutory time limitation because it purchased and continues to finance the properties with funds received from the Federal Government. The municipality opposes and argues that amendment is futile because the taxpayer is statutorily time-barred from litigating tax appeals for those years. For the reasons explained more fully below, the court denies the motions to amend.

I. Findings of Fact and Procedural History

Pursuant to R. 1:7-4, the court makes the following findings of fact based on the submissions¹ of the parties.

Positive Health Care, Inc. (PHCI) is a non-profit corporation established in 1992 under Section 501(c) (3) of the Internal Revenue Code. Both the State of New Jersey and the Federal Government recognize it as a tax-exempt organization. PHCI's mission is to prevent homelessness for at risk HIV/AIDS persons and their families within the city of Newark.

Pursuant to its mission, PHCI provides health and supportive services to homeless HIV/AIDS individuals and their families to help stabilize them in the community. Acceptance into the PHCI program requires that the applicant have an HIV/AIDS diagnosis, be income eligible, and chronically homeless. PHCI offers these individuals long-term rental assistance, emergency service, temporary shelter, and permanent housing for families. Qualified applicants also receive various services such as transportation, case management, substance abuse counseling, life skills, referral to core medical services, and employment services.

In 2003, PHCI received financial assistance from Newark's Office of Partnership and Grants Management, which included federal funding through the Housing Opportunities for Persons With AIDS Program ("HOPWA")². PHCI continued to receive these grant monies

¹ The submissions included documents submitted by plaintiff in support of motions for summary judgment filed in February 2015. Plaintiff withdrew the motions when the municipality conceded that the property was exempt.

² The Housing Opportunities for Persons With AIDS (HOPWA) Program is the only Federal program dedicated to the housing needs of people living with HIV/AIDS. Under the HOPWA program, the U.S. Dept. of Housing and Urban Development (HUD) makes grants to local communities, states, and nonprofit organizations for projects that benefit low-income persons living with HIV/AIDS and their families.

administered by Newark through December 31, 2014. PHCI also receives grant monies from Essex County and the Ryan White HIV/AIDS Program³ to carry out its charitable mission.

In 2002, the United States Department of Housing and Urban Development (“HUD”) identified Newark as one of the major urban cities in the United States that needed permanent housing opportunities as a major thrust in preventing and containing the HIV/AIDS epidemic. HUD created a program that would provide matching funds to agencies that could provide permanent housing opportunities to qualified HIV/AIDS individuals. Agencies that were already receiving HOPWA funds were given high priority for these matching funds.

To further its mission and outreach, PHCI resolved to provide housing services to its clients by participating in HUD’s 2002 initiative. PHCI obtained mortgages from a commercial bank qualifying it to receive matching funds from HUD. PHCI used the mortgage funds in conjunction with the federal funds to purchase multiple properties throughout Newark. The HUD funding required the inclusion of a restrictive covenant in the deeds mandating that use of the properties be for permanent housing for infected HIV/AIDS persons and their families for at least 20 years.⁴

³ The U.S. Department of Health and Human Services (HHS), the Health Resources and Services Administration (HRSA), and the HIV/AIDS Bureau (HAB) administer the Ryan White HIV/AIDS Program. The program works with cities, states, and local community-based organizations to provide services to individuals who do not have sufficient health care coverage or financial resources to cope with HIV/AIDS.

⁴The operation of the properties are restricted to exclusively carry out projects that serve homeless individuals under The McKinney-Vento Homeless Assistance Act of 1987, 42 U.S.C. Section 11301. The McKinney Act is federal legislation that encompasses programs that are mandated to eradicate homelessness in America. McKinney Act, 142 U.S.C. 1183(b) (1).

By 2010, PHCI owned twelve residential properties in Newark. On August 24, 2010, PHCI applied for tax-exempt status for those properties. Initially, Newark denied the exemptions due to outstanding taxes owed on the properties. To rectify this deficiency, PHCI obtained an equity loan, paid the outstanding taxes to date⁵ and reapplied for exemption. In early 2011, Newark denied the applications for exemption⁶ and PHCI filed timely appeals with the Essex County Board of Taxation. The board dismissed the appeals without prejudice on September 8, 2011.

On November 9, 2011, PHCI filed timely appeals with the Tax Court. The Case Information Statements filed with the Complaints indicated that the appeals were for tax year 2010. On October 20, 2014, the statements were amended to change the tax year under appeal from 2010 to 2011. For tax years 2012, 2013, and 2014, PHCI did not apply for exemptions, did not file tax appeals, and did not pay property taxes.

At some point in 2014, Newark executed multiple tax sales on PHCI properties, which are currently the subject of foreclosure actions in the Superior Court, Essex County, Chancery Division.⁷ The exemption dispute and the foreclosure actions have led to the current situation where Newark is no longer funding PHCI with HOPWA grants, putting the entire program and

⁵ Payment did not include all property taxes due for 2010, only those that were past due.

⁶ Presumably, Newark's denials were based, at least in part, on the Tax Court's decision in Advance Housing, Inc. v. Township of Teaneck, which denied an exemption on the basis that the housing component of the charitable organization was not integrated with counseling and support services. The Appellate Division reversed the Tax Court decision and the New Jersey Supreme Court affirmed the Appellate Division decision. See Advance Housing Inc. v. Township of Teaneck, 215 N.J. 549 (2013).

⁷ See, e.g., U.S. Bank Cust v. Positive Health Care, F-025511-14; L.B.N.J. v. Positive Health Care, F-50376-14; City of Newark - In Rem Foreclosure, F-031507-15 & F-034636-14.

its residents in jeopardy. As of December 2014, the program assisted 31 families and over 81 individuals infected and affected by HIV/AIDS.

In February 2015, PHCI filed motions for summary judgment. The court denied the motions without prejudice due to an incomplete factual record. On May 8, 2015, the court received notice that the matters were settled pending governing body approval. The essence of the settlement was that Newark conceded that the properties qualified for property tax exemption. On May 29, 2015, PHCI submitted partially executed Stipulations of Settlement to the court, which contained requests that, pursuant to the Freeze Act⁸, the exemptions for 2011 extend to tax years 2012 and 2013.

On October 21, 2015, PHCI filed motions to amend the complaints to include tax years 2010, 2012, 2013 and 2014. On December 4, 2015, the court received fully executed revised Stipulations of Settlement for tax year 2011 only (without a request for Freeze Act relief). Additionally, Newark represented to the court and to PHCI that the properties would be exempt for tax year 2015. The parties also agreed to permit the motions to amend the complaints to proceed.

During the pendency of these motions, the relationship between the parties has continued to disintegrate. New allegations that Newark has violated its written agreement with PHCI that its properties are exempt for tax year 2015 have arisen and are now the subject of new litigation in the Chancery Court.

⁸ N.J.S.A. 54:51A-8, commonly referred to as the Freeze Act, is a statutory mechanism that permits a taxpayer to “freeze” a base year judgment for an additional two years, assuming there has been no significant change in the property and there has not been a revaluation. The Freeze Act, however, does not apply to exemptions. See Boys Club of Clifton v. Township of Jefferson, 72 N.J. 389 (1977).

II. Conclusions of Law

In the Tax Court, R. 8:3-8(a) governs requests to amend the pleadings. While a motion for leave to amend a pleading is, as a rule, liberally granted, courts should not permit amendment when the proposed amended pleading itself will be dismissed. See Prime Accounting Dep't v. Township of Carney's Point, 212 N.J. 493, 511 (2013) (recognizing that courts will not allow amendment when it would be futile because the amended claim would fail). The same is true for amendments to pleadings made under R. 4:9-3 applicable to civil actions.

Rule 8:3-1 (c) provides that in local property tax cases, “a separate complaint must be filed *for each tax year . . .*” R. 8:3-1 (c) (emphasis added). Furthermore, N.J.S.A. 54:3-21(a) requires taxpayers to file their appeals on or before April 1, of each tax year, or within forty-five (45) days of the notice of assessment, whichever is greater. Based on the foregoing, for tax years 2010, 2013, and 2014, PHCI would have had to file an appeal on or before April 1 of each respective tax year, and May 1 for 2012, which was a municipal wide revaluation year. This statutory time limit is jurisdictional and may not be relaxed by the Tax Court. McMahon v. City of Newark, 195 N.J. 526, 530, (2008); F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 425 (1985); Prospect Hill Apts. v. Borough of Flemington, 172 N.J. Super. 245, 1 N.J. Tax 224 (Tax 1979).

This court finds that PHCI’s failure to file tax appeals in the years in question is a fatal flaw, denying this court jurisdiction to provide relief, despite the strength of the exemption claim and despite the fact that the properties have been purchased and financed almost exclusively with taxpayer funds earmarked for the HIV/AIDS homeless population in Newark.

In support of its motions, PHCI asserts that the statute of limitations prescribed in N.J.S.A. 54:3-21(a) does not apply because it purchased the properties with federal funds,

causing the properties to be tax-exempt pursuant to the United States Constitution Supremacy Clause. PHCI emphasizes the fact that HUD has a legal interest in each property to insure that the properties comply with federal guidelines. The HUD Addendum states:

This conveyance is made subject to the following restrictions for the use of the property hereby conveyed: Grantee, grantee's heirs, successors or assigns, shall operate the property in accordance with sections 423(b)(1) and (b)(3) of the McKinney Act 142 U.S.C. 11383(b)(1) and 11383 (b)(3). This restriction shall remain in full force and effect and shall run with the title to the property conveyed for a period of twenty (20) years from the date of this deed.

PHCI's argument, in essence, equates federally owned property with property purchased by private entities with federal funds.

Prior to 1944, N.J.S.A. 54:4-3.3 provided tax exemption for real and personal property of the United States. In 1944, this provision was repealed and any such exemption must now be found in federal law. The Supremacy Clause of the United States Constitution and the doctrine of sovereign immunity preclude the levying of local property taxes on the Federal Government and, as a rule, most federal property is tax-exempt. There is no such provision however for privately owned property purchased in whole or in part with federal funds. Consequently, owners of real property claiming an exemption must comply with the statutes, rules and case law enacted to protect all taxpayers in New Jersey.

The fundamental approach of New Jersey's property tax laws is that all property must bear its just share of the public responsibility of taxation. The Legislature has determined that all real property "shall be subject to taxation annually." N.J.S.A. 54:4-23. Further, "[a]ll real property shall be assessed to the person owning the same on October 1 in each year . . . [and] [t]he assessor shall . . . determine the full and fair value of each parcel or real property situated in the taxing district . . ." N.J.S.A. 54:4-23. Thus, local property taxes are "charged to and

collected from the owner of the property.” Rainhold Holding Co. v. Township of Freehold, 14 N.J. Tax 266, 276 (Tax 1994). “The property is assessed to the owner . . . and . . . tax bills are sent to the owner.” See ibid. Statutes granting tax exemptions depart from that approach by providing preferential treatment, which shifts the tax burden onto the nonexempt taxpayers in the taxing district. Therefore, statutes granting tax exemption must be strictly construed.

The deadline for filing an appeal of local property taxes and applications for exemption set forth in N.J.S.A. 54:3-21(a) applies to nonprofit organizations. That an organization is recognized as a nonprofit by the State of New Jersey, and by the Internal Revenue Service “pursuant to I.R.C. Section 501 (c) (3), is not, in and of itself, enough to qualify [the organization] for property tax exemption under N.J.S.A. 54:4-3.6.” See Essex Properties Urban Renewal Associates, Inc. v. City of Newark, 20 N.J. Tax 360, 368 (Tax 2002). Rather, a nonprofit organization seeking an exemption for real property it owns must comply with the statutory filing requirements.

Compliance with statutory filing requirements is an unqualified jurisdictional imperative, long sanctioned by the courts. “It is well established that the courts of this state have traditionally required that taxpayers file timely applications as well as appeals and that they are barred from relief if they fail to do so.” City of Hackensack v. Bergen County, 405 N.J. Super. 235, 24 N.J. Tax 390, 401 (App. Div. 2009) (citations omitted). “The basis for these decisions has been that statutory tax deadlines are ‘substantive’ or ‘jurisdictional’ statutes of limitation and that courts are without authority to extend such deadlines established by the New Jersey Legislature.” Ibid. (citations omitted). “[T]he statutory time prescription for the filing of an appeal has uniformly been held to constitute a non-relaxable jurisdictional requirement attended by the

consequence of preclusion of the action if not complied with.” F.M.C. Stores Co. v. Borough of Morris Plains, 195 N.J. Super. 373, 381, (App. Div. 1984) (citations omitted).

PHCI’s reliance on Advance Housing Inc. v. Township of Teaneck, 215 N.J. 549 (2013) is equally unpersuasive. In that case, the non-profit corporation seeking exemption had filed appeals of the denial of exemptions by nine Bergen County municipalities. Id. at 553. The Tax Court upheld the denials. The Appellate Division reversed the Tax Court and the Supreme Court affirmed the reversal. Id. at 553-554. While the decision in Advance Housing supports PHCI’s exemption argument, the decision does not address, or allow for, a waiver of filing deadlines in exemption cases.

There are multiple cases where the Tax Court has had to affirm an assessment of otherwise tax-exempt property based on a taxpayer’s failure to appeal the assessment of taxes in a timely fashion. For example, in City of Newark v. Block 322, Lots 38 and 40, 17 N.J. Tax 103 (Tax 1997) a taxpayer-church applied for a property tax exemption in 1993, which was denied by both Newark and the Essex County Board of Taxation. The church did not appeal the board’s decision to the Tax Court and never filed appeals of assessments for years prior to 1993. The property taxes for those years went unpaid and ultimately led to foreclosure on the church’s property. In 1997, the Superior Court, Appellate Division, remanded the foreclosure matter to the Tax Court to determine whether the church was eligible for a property tax exemption and, if exempt, the appropriate years when the exemption applied.

The Tax Court found that while the church qualified for a property tax exemption under N.J.S.A. 54:4-3.6, the exemption did not apply for the years at issue because the church failed to appeal the 1993 board decision and failed to challenge assessments for prior years. The court

concluded that the church's failure to timely file was fatal to its exemption claim.⁹ Judge Small wrote: "I do not make this determination easily, because it would appear that, if taxpayer had filed timely appeals, it would have enjoyed a tax-exemption, it would not have been delinquent in taxes, and it would not have been vulnerable to losing the property to tax foreclosure." *Id.* at 107.

As in the case cited above, there is no statutory authority for the Tax Court to void the assessments or to waive the limitations on actions for property tax appeals.¹⁰ PHCI is the owner of the twelve properties in question, not the Federal Government. The purchase of the properties

⁹ The taxpayer also argued that under N.J.S.A. 54:4-3.6c, Newark should grant it an exemption even though it failed to timely file. Under this provision, "the municipality, by ordinance, may, upon a showing of good cause as to why a timely claim was not filed, return all taxes collected on property owned by one or more associations or corporations organized exclusively for charitable or religious purposes, which would have been exempt pursuant to R.S. 54:4-3.6 had timely claim been made therefor; provided, however, that refund shall not be made if more than 3 years have passed since the last date for filing a timely application." City of Newark v. Block 322, Lots 38 and 40, supra, 17 N.J. Tax at 107 (citations omitted). The court determined that only an ordinance by the municipality could accomplish the objective taxpayer argued for and no such ordinance was adopted. *Ibid.* The Tax Court recognized that under the statutory scheme it had no authority to void the assessments on taxpayer's property. *Id.* at 108-109.

¹⁰ Although not cited by the parties, the court uncovered one published opinion in which the Superior Court of New Jersey, Appellate Division extended the right to appeal an exemption denial to include tax years in which no tax appeal was filed.

In New Concepts for Living, Inc. v. City of Hackensack, 376 N.J. Super. 394 (App. Div. 2005), the Tax Court dismissed the taxpayer/non-profit corporation's tax appeals for exemption as untimely under N.J.S.A. 54:3-21(a). On appeal, the taxpayer argued that (1) a 2000 and 2001 tax appeal filed in December of 2001 requesting exemption was timely filed because it never received a notice of assessment or a tax bill; (2) the city was equitably estopped from asserting the forty-five day statute of limitations as a bar to the appeal; and (3) the City was barred from raising the statute by reason of the doctrine of "square corners." The Appellate Division reversed the Tax Court decision based on the square corners doctrine. The facts of that case demonstrated that municipal officials lulled the taxpayer into a false sense of security leading the taxpayer to believe that the City was willing to work with taxpayer in a fair, informal and reasonable manner to fashion a remedy regarding the exemption issue. The municipality then suddenly and inequitably reversed its position and claimed that the taxpayer could not argue its tax-exempt status for 2000 and 2001 on the technicality that the taxpayer had not timely filed its tax appeals.

with federal grant monies and the existence of a HUD addendum on the deed, while sympathetic and compelling, do not give PHCI special standing with respect to local property taxes and do not qualify it for protection under the Supremacy Clause of the Constitution.

The court is satisfied that PHCI, as the owner of record, received all mailings and notices throughout the years in question and had the opportunity to avail itself of the many protections afforded under the tax statutes. For example, had appeals been filed, an application to stay the payment of taxes could have been made which may have eliminated the issuance of the tax sales certificates. Alternatively, upon receipt of notice of the intended sale of tax certificates, PHCI could have filed an action to stay the sales pending the determination of the 2011 exemption appeal. In addition, PHCI could have requested that Newark pass an ordinance making the exemption good for three years as permitted under N.J.S.A. 54:4-3.6c. Instead, PHCI's failure to act over the course of these years has led to a situation where third parties are foreclosing on the properties with no evidence of unfair dealing or misrepresentation by the City of Newark. With the passage of time and the absence of action, the equities have shifted. Now, it would be inequitable to make the taxpayers of Newark forgo the tax income on these properties and pay the interest and attorney fees in the foreclosure actions simply because PHCI failed to safeguard the public funds that were entrusted to it.

III. Conclusion

PHCI failed to file applications for exemptions on its properties for tax years 2010, 2012, 2013, and 2014. Although Newark has conceded the exempt status of the properties for tax years 2011 and 2015, and does not dispute that PHCI would have qualified for an exemption in tax years 2010, 2012, 2013, and 2014, the filing of a claim for exemption would ultimately be dismissed due to the failure to timely file tax appeals for those years.

Under New Jersey's statutory scheme for challenging tax assessments and supporting case law, these "assessments are fixed, and nothing can be done about them." City of Newark v. Block 322, Lots 38 and 40, supra, 17 N.J. Tax at 106 (citing F.M.C. Stores, supra, 100 N.J. at 425). As such, amendment to the complaints to allow for appeals of these tax years would be futile. For this reason, the court denies the motions to amend the complaints.