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THE TAX COURT COMMITTEE ON OPINIONS

METZ FAMILY LTD. PARTNERSHIP,	:	TAX COURT OF NEW JERSEY
	:	
Plaintiff,	:	DOCKET NOs. 001064-2015
	:	000482-2016
	:	000783-2017
v.	:	
	:	
TOWNSHIP OF FREEHOLD,	:	Approved for Publication In the New Jersey Tax Court Reports
	:	
Defendant.	:	
	:	

Decided: October 20, 2020

Daniel J. Pollak and Michael Rienzi for plaintiff
(Brach Eichler, L.L.C., attorney).

Martin Allen and Wesley E. Buirkle for defendant
(DiFrancesco, Bateman, Coley, Yospin, Kunzman, Davis, Lehrer & Flaum, P.C., attorney).

Abiola G. Miles and Michelline Capistrano Foster for the Monmouth County Board of Taxation and the Director, Division of Taxation
(Gurbir S. Grewal, Attorney General of New Jersey, attorney).

SUNDAR, J.T.C.

This opinion decides the motions of Defendant (Township) seeking Orders for the joinder of the Monmouth County Board of Taxation (County Board) and the Director, Division of Taxation (Director or Taxation) (collectively governmental entities) under R. 4:28-1 for purposes of determining the issue raised by the court: whether the Chapter 123 ratio (average ratio), promulgated by the Director for the Township, should apply under N.J.S.A. 54:51A-6 to the value determinations made by this court in the above captioned matters. The governmental entities oppose the motions claiming that the application of the average ratio is a routine exercise in any local property tax appeal such as the above appeals, and that in any event, issues in this regard are

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matters of pure statutory/regulatory interpretation which can be decided by the court without their joinder. Plaintiff joins their opposition claiming that it is the court's duty to apply the average ratio as promulgated which obviates the need for joinder of either governmental entity.

For the reasons stated below, the court grants the Township's motions.

PROCEDURAL BACKGROUND

By letter opinion dated March 9, 2020, this court determined the value of property owned by Plaintiff, a local retail shopping center with a warehouse component to the rear (Subject), for each tax year 2014 to 2017. Those value conclusions were lower in amount than the annual local property tax assessments for each such tax year. In a subsequent letter opinion dated April 14, 2020, the court denied the Township's motion to reconsider the value conclusions.

The court left open the issue whether the average ratio should apply to its value conclusions. This is because when it had applied the average ratio to its value determination of a property in another taxing district in Monmouth County, that taxing district, by a reconsideration motion, argued that the average ratio does not apply because under Real Property Assessment Demonstration Program (ADP), N.J.S.A. 54:1-101 to 1-106, in which Monmouth County participates, taxing districts in the county perform annual reassessments approved by the County Board. Therefore, the taxing district contended, its annual reassessments are excepted from application of the average ratio under N.J.S.A. 54:51A-6(d).[1]

In a conference call with counsel for the parties, the court discussed the procedural mechanisms of addressing the average ratio issue and suggested inviting the Attorney General's Office, which represents both the County Board and the Director, to participate in the matters (via

[1] That case is Volovnik v. Twp. of Manalapan, Docket No. 004967-2019. The court has not issued its decision on the reconsideration motion due to the pendency of the identical issue in the instant matters.

briefing/oral arguments). The Township raised the issue of its ability to include these two governmental agencies on appeal without their formal involvement, therefore, the court directed it to file appropriate motions in this regard. The Township then filed the instant motions.[2]

AVERAGE RATIO

After the court finds true value, it should apply the average ratio to the same. See Passaic Street Realty Assoc., Inc. v. City of Garfield, 13 N.J. Tax 482, 484, 485 n.1 (Tax 1993) (the Tax Court must "first . . . find the fair market value of the property" and then determine "the proper tax assessment of the property . . . after the application of that portion of chapter 123 . . . codified at N.J.S.A. 54:51A-6," the Chapter 123 ratio being the "average ratio"); Glenpointe Assocs. et al. v. Twp. of Teaneck, 2020 N.J. Tax LEXIS 9, at *88 (Tax 2020) ("Pursuant to N.J.S.A. 54:51A-6(a), in a non-revaluation year an assessment must be reduced when the ratio of the assessed value of the property to its true value exceeds the upper limit of the common level range").[3] The ratio of assessed-to-true value is obtained by dividing the assessment (set by the assessor) by the property's true value (as determined by the court). If this ratio falls below or above the common level range, then the court should apply the average ratio to its value determination. See Campbell Soup Co. v. City of Camden, 16 N.J. Tax 219, 227, n.3 (Tax 1996) (court "divides the assessment amount by the true value amount as determined by the court at trial" and if the "resulting percentage . . . falls outside the 85%-115% 'corridor,'" it applies the average ratio to the true value, "which can result[] in either an increase or decrease in the assessment.").

[2] The parties agreed that tax year 2014 was not implicated by the average ratio issue, with the Township noting that 2014 was "not a reassessment year."

[3] Approved for publication in the New Jersey Tax Court Reports.

The statute "requires the Director . . . to determine the average ratio and the common level range for each municipality." Ennis v. Twp. of Alexandria, 13 N.J. Tax 423, 428 (Tax 1993). "The 'average ratio' of assessed to true value of real property for a taxing district" is the "ratio promulgated by the Director" under N.J.S.A. 54:1-35.1 "as of October 1 of the year preceding the tax year, as revised by the tax court." N.J.S.A. 54:1-35a(a).[4] See also N.J.A.C. 18:12A-1.14(b)(1)(v) ("The Director's Ratio is the average ratio of assessed to true value for each taxing district as determined by the Director . . . in the Table of Equalized Valuations promulgated annually pursuant to N.J.S.A. 54:1-35.1."). "The 'common level range' . . . is that range which is plus or minus 15% of the average ratio for that district." N.J.S.A. 54:1-35a(b). See also Campbell Soup Co., 16 N.J. Tax at 227 n.3 ("Upper and lower limits are established by taking the average ratio (a promulgated ratio that is equal to the average of the assessed value to true value of certain properties recently sold in the municipality) times 115% and 85%.").

The average ratio does not apply to an appeal of an assessment for a tax year "in which the taxing district shall have completed and put into operation a district-wide revaluation program approved by the Director . . . [under] . . . []N.J.S.A. 54:1-35.35 et seq.[], or a reassessment program approved by the county board of taxation." N.J.S.A. 54:51A-6(d). See also Ennis, 13 N.J. Tax at 428 ("The Legislature provided that the common level ratio is available as a remedy for taxpayers unless a complete revaluation or reassessment program is adopted by the municipality for the tax year . . . . Adoption of either program bars taxpayer relief under this statute.").

The Director's published Chapter 123 ratios for the Township was 89.95% (2015); 89.78% (2016) and 93.42% (2017). However, for each tax year 2015-2017, the Director included the

[4] N.J.S.A. 54:1-35.1 requires the Director to "promulgate a table of equalized valuations" (for calculating and apportioning school aid distribution). This table should contain, among others, the average ratio for each taxing district. N.J.S.A. 54:1-35.2.

Township in his list titled "Approved Revaluations and Reassessments," tabulating municipalities (by county and by "type of activity") which were "verified for compliance with N.J.A.C. 18:12A-1.14(g),"[5] therefore, "will be recognized in" his Table of Equalized Valuations for a particular tax year "for implementation of a Revaluation/Reassessment."[6] On each list for tax years 2015-2017, the Director included the Township as having performed a "reassessment."[7]

THE ADP LAW

The ADP law was enacted in 2013. See N.J.S.A. 54:1-101 to -106. The ADP law does not contain the phrase "annual reassessment" or "average ratio" nor reference Chapter 123 or N.J.S.A. 54:51A-6. Monmouth County, where the Subject is located, participates in the ADP.

In Tartivita v. Borough of Union Beach, 31 N.J. Tax 335, 342-43 (Tax 2019) (appeal pending), this court analyzed certain provisions of the ADP law after testimony of the assessor as to his responsibilities and functions when he performed, what he stated to be an annual reassessment. The court then held that for purposes of application of the Freeze Act, N.J.S.A. 54:51A-8, an annual assessment conducted by a township located in Monmouth County is not a complete or district-wide reassessment, even if labeled as an annual reassessment purported to be conducted solely pursuant to the ADP law. Id. at 343.[8]

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[5] N.J.A.C. 18:12A-1.14(g) provides that "[n]o revaluation or district-wide reassessment will be credited by the Director for recognition on the Director's annual Table of Equalized Valuation where less than 50 percent of the line items have changed. Ordinarily revaluations or district-wide reassessments involve adjustments to 100 percent of the line items."

[6] Available at https://www.nj.gov/treasury/taxation/lpt/revaluation.shtml.

[7] The other type of activity in these years' lists was revaluation. For tax year 2019, the type of activity included "annual reassessment," and for tax year 2020, the list also included "district-wide reassessment."

[8] Under N.J.S.A. 54:51A-8, a final judgment of the Tax Court is "conclusive and binding" for two years after the assessment year "covered by the final judgment" but this finality "shall terminate with the tax year immediately preceding the year in which a program for a complete revaluation or complete reassessment of all real property within the district has been put into effect."

A similar conclusion followed in Pella v. City of Paterson, 31 N.J. Tax 74, 479 (Tax 2020) ("the court . . . concludes that implementation of an Annual Reassessment Program does not preclude application of the Freeze Act . . . as same does not constitute a complete revaluation or complete reassessment of all real property in the taxing district, [and] . . . invocation of an improper Annual Reassessment Program will not serve to bar application of the Freeze Act."). Note that the taxing district in Pella was not in an ADP-participant county.

Neither Tartivita nor Pella had directly before it the issue of whether the average ratio applies, therefore, did not decide the same. Note that in Tartivita, the court alluded to the average ratio but in the context of deciding whether the annual assessment therein was a complete or district-wide reassessment for purposes of the Freeze Act. See 31 N.J. Tax at 357 ("If the annual assessments are deemed a complete reassessment, it is unclear why [the Director's] published average ratio for the Borough [of Union Beach] is not 100% each tax year."). In Pella, the court rejected the Director's argument that Paterson received "credit for a district-wide reassessment" on the Certified Table of Equalized Valuations under N.J.A.C. 18:12A-1.14(g) because it had changed more that 50% of its assessment line items for the tax years at issue, as the cited regulation only applied to a "'revaluation or district-wide reassessment,'" and not to an "Annual Reassessment Program." 31 N.J. Tax at 500-01.

ARGUMENTS

The thrust of the Township's argument is that the average ratio does not apply because the Township's annual local property tax assessments are "annual reassessments" pursuant to the ADP law and N.J.A.C. 18:12A-1.14(i), the only regulation addressing annual reassessments (hereinafter ARR which stands for Annual Reassessment Regulation). It also argues that application of the average ratio is excepted under N.J.S.A. 54:51A-6(d). For purposes of these motions, the

Township maintains that the Director and the County Board have an essential interest in whether a reassessment conducted under the ARR constitutes a "reassessment program approved by the county board of taxation" under N.J.S.A. 54:51A-6(d) because (1) both entities approved the Township's annual reassessments pursuant to the ARR so they should have to defend their approval; (2) at issue is the validity and construction of the ARR, which being promulgated by Taxation, should also be defended by Taxation. Without these two parties, the Township argues, it would have to defend their actions, when all it is doing is acting on their approvals; and (3) if the average ratio were to apply to the Subject, it would be at the expense of every non-appealing taxpayer in the Township because their properties are assessed at what the Township considers to be 100% of market value, thus, they are paying higher taxes than would Plaintiff.

The governmental entities claim that "simply because" they have "regulatory administrative or quasi-judicial oversight or authority at some point regarding the subject matter of a dispute in litigation," it does not mean they should participate (citing Borough of Hasbrouck Heights v. Div. of Tax Appeals, 48 N.J. Super. 328, 333 (App. Div. 1958)). They acknowledge that joinder is appropriate if "the interest of the public in the litigation reaches out decidedly beyond that of the immediate parties, and in connection with which the agency has a general public duty to perform," or "where the public is concerned with the maintenance of uniformity in the administration" of law, or where there is a decided public interest in the matter which may be overlooked because the position taken by the agency is vigorously opposed by all other parties." Id. at 333-34. However, they claim, such are not the circumstances here. Thus, and absent any constitutional or other challenge to the validity of the statute or regulations by the Township, they should not be joined. They also contend that:

(1) Application or otherwise of the average ratio has always been a matter of routine by this court without seeking participation of either government entity, as seen in several unpublished opinions. It should be no different here.
(2) Interpretation of N.J.S.A. 54:51A-6(d) is a legal matter for which their involvement is not required (but noting that this statute does not require a "complete" reassessment).
(3) The ARR does not apply to assessments conducted in ADP-participant counties such as Monmouth County, because the regulation never cites to the ADP law as the authority for its promulgation. In any event, interpretation of the ARR is a matter of law, therefore, the Director's joinder is unnecessary. However, if this court were to declare the regulation invalid, then the governmental entities must be requested to join the proceedings.
(4) Determination of whether assessments in Monmouth County qualify as an annual reassessment involve facts which are solely within the knowledge of the assessor imposing such assessments, therefore, it is the assessor's participation that is appropriate and necessary.

However, they note that "the processes and procedures" of district-wide reassessments under N.J.A.C. 18:12A-1.14(c) are "essentially the same" as those for annual reassessments under the ARR, namely: the assessor must propose and submit a plan; either plan should be approved by both the County Board and the Director; the assessor must provide periodic status reports to both these entities; both entities monitor the entire process under either plan (citing N.J.A.C. 18:12A-1.14(d), (e); and Forms AFR and AFR-A[9]). The claim that either type of reassessment results in valuing properties at their market value under N.J.S.A. 54:4-23, "including a change in more than 50% of the taxing district's line items," and that if more than 50% of the line items are changed, as verified by both the County Board and the Director, then "the revaluation, reassessment or annual assessment will be given credit on the Director's" Table of Equalized Valuations (citing N.J.A.C. 18:12A-1.14(g)).

[9] Both forms are issued by Taxation. An assessor must submit either form for approval of the governmental entities, prior to performing any reassessment. Form AFR (Application for Full Reassessment) is to be used for a district-wide or complete reassessment. N.J.A.C. 18:12A-1.14(c). Form AFR-A (Application for Annual Reassessment) is to be used for an annual reassessment. N.J.A.C. 18:12A-1.14(i).

ANALYSIS

Rule 4:28-1 allows for the joinder of parties to an action to achieve "just adjudication." Subsection (a) of the rule addresses joinder where "feasible" of a party "who is subject to service of process." The subsection states as follows:

> Persons to be Joined if Feasible. A person who is subject to service of process shall be joined as a party to the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest in the subject of the action and is so situated that the disposition of the action in the person's absence may either (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or other inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant.
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> [R. 4:28-1(a).]

The court rule also addresses situations of joinder where the person sought to be joined "cannot be served with process." R. 4:28-1(b). This subsection states as follows:

> Disposition by Court if Joinder Not Feasible. If a person should be joined pursuant to R. 4:28-1(a) but cannot be served with process, the court shall determine whether it is appropriate for the action to proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable.
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> [R. 4:28-1(b).]

The subsection then lists the factors a court should consider before dismissing a complaint for non-joinder. Ibid. Subsection (b) does not apply here since both governmental entities were served with, and opposed, the Township's motion. Therefore, the court need not analyze whether these entities are "indispensable" parties, that term only being used under subsection (b) of the rule.

The court agrees with the Township that the Director and the County Board can and should be joined as parties under R. 4:28-1(a). These governmental entities concede that they approve the assessor's initial application to perform an annual reassessment (Form AFR-A), allegedly monitor the assessor's progress, and the Director allegedly verifies the finalized assessment for "credit" on his Table of Equalized Valuations. Indeed, the ARR sets out the Director's and County Board's roles in terms of review and approval of a Form AFR-A. See N.J.A.C 18:12A-1.14(i)(2)-(4). Having provided such approval, allegedly monitored the assessor's actions,[10] and having apparently verified the assessment as qualifying on the Director's list for implementation of a Revaluation/Reassessment, it is these entities who should explain and defend their process and explain why there is no average ratio for these assessments (i.e., the ratio is at 100%). This is not the burden of the Township or its assessor.

After claiming to be the gatekeepers of the assessor's actions, the entities nonetheless ask the Township to fathom their process, methodology, checks, counter-checks in connection with an assessor's proposed and finalized annual reassessment, where that reassessment is the basis for the alleged non-application of the Director's average ratio. How is the Township to know any facts in this regard? How is the Township to know how and when the alleged checks are done by either or both governmental entities in determining that the reassessment qualifies to be tabulated under the annual "Approved Revaluations and Reassessments" list? This is especially where the Director's regulation, N.J.A.C. 18:12A-1.14(g), authorizing the "credit" does not reference nor mention, an annual reassessment.[11] That the consequence of more than 50% line item changes is

[10] Note that neither N.J.A.C. 18:12A-1.14(d) nor 12A-1.14(e), the regulations cited by the governmental entities as the authority for monitoring the assessor's actions, address an annual reassessment.

[11] See supra n.5.

the same for a district-wide or complete reassessment and an annual reassessment as asserted by the governmental entities, is not controlling. It is not the end result that matters, but the verification process leading to that end result which is being sought here. Only the County Board and the Director can provide such information.[12]

In this connection, the governmental entities' argument that only an assessor is the appropriate joinable party to decide whether an assessment qualifies as a reassessment to which the average ratio does not apply, is also questionable. The entities maintain that the ARR does not apply to Monmouth County since it does not cite the ADP law as its source authority.[13] If so, how is an assessor in that county guided as to what is or should be a reassessment for purposes of the average ratio issue? Presumably, it is by the County Board's written directives or regulations pursuant to the ADP law. This would then require the County Board's joinder. Note that the ADP

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[12] See e.g. 49 N.J.R. 271(a) (Feb. 2017) where Taxation disagreed with the suggestion from the New Jersey Association of County Tax Boards (NJACTB) that a new section be promulgated providing that "a minimum of (10% or 20%) of the line items must be changed in value in order for the program to be credited by the Director for recognition on the Director's Annual Table of Equalized Valuations and to allow for the use of the page 8 formula in calculating the annual equalization ratio." The reason for the disagreement was simply that Taxation "does not agree that it is necessary to add a new section at this time." Ibid.

[13] See e.g. 48 N.J.R. 1605(a) (Aug. 2016) (proposing the ARR "because many municipalities are performing annual reassessments and are moving away from a four-year period of reassessments with 25 percent annual inspection report to a five-year period of inspection with 20 percent annual inspection requirement" which would lower "costs through extending the inspection period" and the ARR was being "proposed for the purposes of equity and reducing costs because of the changes affecting only certain counties under N.J.S.A. 54:1-101 et seq."). The statutory authority for the amendments to N.J.A.C. 18:12A was cited as N.J.S.A. 54:1-35, 54:1-35.35, 54:3-14, 54:4-26, and 54:4-35. See 48 N.J.R. 1605(a). See also 49 N.J.R. 271(a) (finalizing the proposed amendments to N.J.A.C. 18:12A and citing to the same statutory authority).

Note that comments to the proposed regulations were authored by Robert M. Vance, CTA, Tax Administrator for Somerset County, on behalf of the NJACTB Task Force members. Ibid. Comment 2 suggested including the word "annually" in the ARR so as "to convey that it is for annual reassessments" and replacing the phrase "proposed district-wide reassessment" with "proposed annual reassessment program" in that regulation since it did "not pertain to district-wide reassessment programs." Ibid. The Director agreed to such replacement "because the intent of the amendments was to provide for regulations governing annual reassessments." Ibid.

law does not contain the phrase "annual reassessment," does not reference Chapter 123 or N.J.S.A. 54:51A-6, and does not declare that assessments performed by a taxing district within an ADP-participant county are excepted from N.J.S.A. 54:51A-6 or excluded under N.J.S.A. 54:51A-6(d). Rather, it leaves implementation of the ADP entirely to the participant county with input from the Director who can also "take any action" that was "necessary and consistent with the intent of" the ADP law including "waiv[ing] any provisions of statutory law and regulations that" were "inconsistent with the intent or application of the" ADP law. N.J.S.A. 54:1-104(g). If there are no regulatory or other formal guidance by the County Board on reassessments, how are the reassessments concluded to be so for purposes of the average ratio issue? These questions render both governmental entities as appropriate joinable parties here.

Additionally, if as argued here, the ARR does not apply to Monmouth County, then what is the source authority for the regulation? N.J.S.A. 54:51A-6? If there is no identifiable source, would the ARR be an exercise of exceeded regulatory authority? The court should not be asked to first decide this issue and then invite the participation of the governmental entities.

The court agrees with the Township that the issue is of first impression and involves significant public interest since it can impact all the assessments in the Township, and it implicates the Uniformity Clause of our State's Constitution. The unreported cases relied upon by the Director and the County Board as examples of "routine" non-application of the average ratio are not precedential nor controlling. [14] Further, they preceded the ADP law and the ARR; did not involve an ADP-participant county; and did not contain any analysis as to why there is no average ratio

[14] To the extent the governmental entities contend that application of the average ratio is a simple and routine exercise, they are over-simplifying the issue. If it were so, the court would not have even left it open. Indeed, when the court applied the average ratio, it prompted an immediate motion for reconsideration on grounds such application was improper. See supra n.1.

for the annual assessments (i.e., why the assessments should be deemed to be at 100% of value). Therefore, under Hasbrouck Heights, these cases are those where "the interest of the public in the litigation reaches out decidedly beyond that of the immediate parties" and "the public is concerned with the maintenance of uniformity in the administration of the administrative law." 48 N.J. Super. at 333-34.

CONCLUSION

For the aforementioned reasons, the court grants the Township's motions to have the Director and the County Board be joined as parties to the litigation for purposes of the outstanding issue in these matters: application of the average ratio.