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## A Lawyer's Perspective

# The Freeze Act and other tax appeal tips

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**T**he Freeze Act? Isn't what we all get from our significant other when we do something really dumb? Or, what your kids do when you catch them with their hands in the cookie jar (or worse, on the steering wheel of your new car). No, it's much more complicated than any of that (if that's possible).

The Freeze Act is a complex series of statutes, regulations and case law that are designed to prevent a municipality from increasing a property tax assessment after successful appeal of a real property tax assessment. What, you say? Taxpayer protection in New Jersey? How can that be?

That's right. Courts have repeatedly pointed out that the legislature's intent was to prohibit a municipality from increasing a tax assessment in the two years subsequent to a successful appeal, whether through a judgment or settlement. While this "freeze" ends with a revaluation or reassessment, a taxpayer can generally rest assured that one appeal could lower their assessment for up to three tax years in total.

Okay, now, don't get too excited. It's not all that easy to understand, let alone use to your benefit. Let's go through the basics, with the understanding that the purpose of this discussion is merely educational. The full application of this law is much more complex than can be reviewed in even the generous space provided by the Press. Unless you are an attorney with considerable experience in property tax appeal law, please don't try to do this on your own.

In my last article, I talked about a discussion by the knowledgeable panel at the recent annual joint dinner of the Southern Jersey Chapter of the Appraisal Institute and the NJ Association of Municipal Assessors.

Since the statutory date of value for tax assessment valuation in New Jersey is October 1st of the preceding year, the recent market drop in South Jersey could cause a problem in certain 2008 tax appeals.

Although recent low comparable sales should turn the tables for 2009 tax appeals, that will not help in an appeal to a County Board of Taxation since that body is statutorily required to "hear and determine all appeals within three months" from the filing date. On the other hand, Tax Court appeals can go on for years. As indicated at the above referenced dinner by John Lloyd, an experienced practitioner and panel member, everyone involved in tax appeals needs to be aware of the Freeze Act. That includes taxpayers and municipal officials as well as appraisers and assessors.

There are two separate statutes with similar provisions: one for appeals to the County Board of Taxation and one for appeals to the Tax Court. The Freeze Act applies when a final judgment is rendered in an appeal. The judgment is then binding on the municipality for the tax year under appeal, as well as the two subsequent years, unless there is a revaluation. The "freeze" ends if the property has an addition constructed, is converted to cooperatives or condominiums, or is granted a subdivision or zoning change. However, the assessor must also prove that such events also caused a change in value.

When the assessment is increased in either of those two subsequent years, the burden of proof shifts from the taxpayer to the municipality. If the increase was not justified, the municipality pays the taxpayer's legal, appraisal and other reasonable costs.

Added assessments are covered under the

Freeze Act. Farmland assessments are not. A withdrawn appeal is not covered. The Freeze Act does not apply when a judgment affirms or sustains the assessment where there is no hearing or valuation issue. Such a judgment may be rendered in an exemption issue or when a taxpayer's fails to file a required Chapter 91 income-expense report.

The Freeze Act does apply to judgments on valuation and to settlements. In a negotiated settlement, the municipality and taxpayer may enter into an agreement for the Freeze Act to cover less than the two years following the appeal year, and can include terms regarding successor owners. The Act is generally designed to be "self-executing", but the taxpayer may have to request its application under certain circumstances. The timing of a settlement and its effect on the Act can be tricky, so consult a knowledgeable attorney.

I can't over-emphasize that last point. If you think George Bush is having a bad year in the polls, he could look like Ronald Reagan after the fall of the Berlin Wall compared to what you will experience if you attempt to navigate the intricacies of the Freeze Act by yourself. Whether you are a municipal official or taxpayer, I suggest that you obtain legal advice from a knowledgeable attorney before attempting to deal with the Freeze Act.

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*Dennis A. Scardilli is an attorney-at-law in the Atlantic City area. The information in this article has been provided only for informational and educational purposes and is not intended to provide legal advice. For legal advice on this or any other topic, contact a qualified attorney.*