

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-4927-10T4
A-5159-10T4
A-5195-10T4
A-5196-10T4
A-5968-10T4¹

KYOON and AEHYUN SHIN,
JOHN and MARIE STEINDL,
LOUISE WEXLER, STACY and
MICHAEL KLEIN, JAY D. AND
SOON S. LEE, DO SUK KEY
and YONG EUN LEE, ELLIOT R.
and SHELLY REED, ALAN and
MICHELE WEISBERG, YOUNG A. SOHN,
MORRIS and MARGARET ANNUNZIATO,
YOUNG M. KIN, MARIO SIMONUTTI,
TODD E. and DIANE SEMON,
LANCE and DEBBIE SINERT,
KAREN KADISH, RAFAEL and BETH
LEVIN, BARBARA GLUECK,
JEFFREY and PEGGY ELIAS, and
ROBERT AND JILL SPIEGEL,

Plaintiffs-Appellants,

v.

BOROUGH OF NORWOOD,

Defendant-Respondent.

BERNICE EFFRON,

Plaintiff-Appellant,

v.

¹ These appeals are consolidated for the purposes of this opinion.

TOWNSHIP OF WASHINGTON,
Defendant-Respondent.

IN YOUNG & SUNG SOOK CHUNG,
Plaintiffs-Appellants,
v.

BOROUGH OF CRESSKILL,
Defendant-Respondent.

KAZUE SHINTANI & R. VALDEZ,
Plaintiffs-Appellants,
v.

BOROUGH OF CRESSKILL,
Defendant-Respondent.

BORIS S. KAGANOV,
Plaintiff-Appellant,
v.

BOROUGH OF CLIFFSIDE PARK,
Defendant-Respondent.

Argued May 29, 2012 - Decided July 6, 2012

Before Judges Rodríguez, Ashrafi and
Fasciale.

On appeal from the Tax Court of New Jersey,
Docket Nos. 012028-2010, 012033-2010,

012036-2010, 012039-2010, 012040-2010,
012042-2010, 012045-2010, 012046-2010,
012051-2010, 012052-2010, 012056-2010,
012054-2010, 012059-2010, 012061-2010,
012063-2010, 012064-2010, 012065-2010,
012067-2010, 012069-2010, 011887-2010,
011932-2010, 011928-2010, 011937-2010.

Hubert C. Cutolo argued the cause for appellants (Cutolo Law Firm, attorneys; Mr. Cutolo and Jeffrey S. Paige, on the brief).

Andrew T. Fede argued the cause for respondent Borough of Norwood in A-4927-10 (Archer & Greiner, attorneys; Mr. Fede, of counsel and on the brief).

Kenneth G. Poller argued the cause for respondent Township of Washington in A-5159-10.

Christopher E. Martin argued the cause for respondent Borough of Cresskill in A-5195-10 and A-5196-10 (Morrison Mahoney, attorneys; Mr. Martin and Owen T. Weaver, on the brief).

Christos J. Diktas argued the cause for respondent Borough of Cliffside Park in A-5968-10 (Diktas Schandler Gillen, attorneys; Mr. Diktas, on the brief).

PER CURIUM

Appellants are property owners who attempted to file tax appeals from the 2010 real property assessment with the Bergen County Board of Taxation (Bergen Board) on the Thursday, April 1, 2010 filing deadline. Their lawyer, Hubert C. Cutolo (Cutolo), hired a courier service that was unable to get to the

Bergen Board's office by 4:30 p.m., that entity's closing time.² The petitions for tax appeal (tax appeals) were not filed until the next business day, and the Bergen Board rejected them as untimely. Appellants filed complaints with the Tax Court seeking a finding that the Bergen Board should have accepted their tax appeals. Appellants now challenge the decision by Tax Court Judge Joseph M. Andresini, granting the defendant municipalities' motions to dismiss. We affirm.

According to Cutolo, on April 1, 2010, his firm (Cutolo Law), which is located in Manalapan, hired A-1 Messenger Service, Inc. (A-1) to deliver numerous tax appeals to nine county boards throughout New Jersey. A-1 employees arrived at Cutolo's office at 11:30 a.m. Cutolo spoke with the couriers and emphasized that the deliveries needed to be completed by 4:00 p.m., and instructed the couriers to call his office if they thought delivery by 4:00 p.m. would not be possible. Cutolo's firm, in such case, would then send another courier with copies of the tax appeals to file them before a specific board office closed. However, by the time A-1's courier Leonard Sandler advised Cutolo that he would not be able to make it to

² There is no uniformity among the county boards with respect to closing time. Some close at 4:00 p.m. (Sussex), others at 4:30 p.m. (Bergen) and others at 5:00 p.m. (Burlington).

the Bergen Board by 4:30 p.m., Cutolo was not able to send another.

Sandler certified that he encountered delays on the trip to the Union and Hudson Counties' boards. He did not leave Hudson until 3:40 p.m. He advised his supervisor, Ethel Smith. He arrived at One Bergen County Plaza, where the Bergen Board is located, at 4:37 p.m. He entered the building's lobby, but was prevented by the security guards from proceeding to the Bergen Board's office.

Ethel Smith certified that at around 3:45 p.m., she contacted the Bergen Board and spoke with a female employee, who explained that the building's doors would be locked at 4:30 p.m., no delivery could be made after that time, and there was no drop box. Around 4:25 p.m., Smith informed Nicole Medolla, a Cutolo Law paralegal, that the courier was on a street near the Bergen Board's offices. The firm told the courier to try to get the security guard to accept the package or let him up to the Bergen Board's offices.

After Sandler got to One Bergen County Plaza and was not permitted to proceed to the Bergen Board's offices, Smith spoke by telephone to the guard. She "begged him to allow our driver access, or in the alternative, to accept delivery and deliver the documents on our behalf." The guard refused.

Medolla certified that she called the Bergen Board around 4:00 p.m. to notify it that a courier bearing one hundred tax appeals was en route. She asked the Bergen Board to accommodate the firm if the courier arrived after 4:30 p.m. "The Board employee responded in a curt fashion that the doors would be shut and locked at 4:30 p.m. [,]" and that there was nothing the Bergen Board would do if the courier arrived after 4:30 p.m. Medolla tried to make additional calls to the Bergen Board. However, the telephone was not answered.

The tax appeals were finally delivered to the Bergen Board on April 5, 2010, the next business day.³ They were stamped as received and filed on that day. The Bergen Board subsequently dismissed all of the appeals as untimely filed.

On June 8, 2010, Cutolo filed ninety-nine complaints⁴ with the Tax Court. Several municipalities, home to the respective taxpayers, moved in the Tax Court to dismiss the complaints. Tax Court Judge Joseph M. Andresini held a hearing on April 29, 2011, which covered forty-four complaints. The municipalities argued that the tax appeals were untimely at the Bergen Board level, thus, divesting the Tax Court of jurisdiction to hear the complaints.

³ Friday, April 2, 2010, was a holiday.

⁴ One party did not seek to challenge the Bergen Board's determination.

Appellants argued that the appeals were delivered to the Bergen Board on April 1, just not accepted, so the Tax Court should toll the limitations period by seven minutes. They also argued that the Bergen Board's public service function necessitates that it deal fairly with taxpayers.

On May 10, 2011, Judge Andresini issued four orders and an oral opinion granting the municipalities' motions to dismiss, treating them as motions for summary judgment. The judge cited a number of cases affirming dismissals of tax appeals for untimely filing where the filing was at least one day after the statutory deadline, but recognized that "[i]n the instant matter[,] such a factual underpinning is absent." Additionally, the judge determined that looking at the legislative intent through N.J.S.A. 54:3-21 and N.J.S.A. 18:12A-1.6(a) & (c), any tax appeal must be filed with the county board on or before April 1. Moreover, in accord with Poet v. Mix, 7 N.J. 436 (1951), tax appeals must be delivered and received by the county board to be considered filed. The judge noted that the Director of the Division of Taxation, through promulgation of regulations and a standardized tax appeal petition form with "unambiguous language," has made it clear that tax appeals received after the close of business on April 1 are considered untimely and should be dismissed. The judge found the facts in this case did not warrant any tolling in light of the clear "legislative intent

for the orderly review of assessment valuations." Because appellants had failed to file their petitions by the close of business on April 1, the court lacked subject matter jurisdiction to hear the complaints.

On June 27, 2011, the Tax Court, on its own motion, consolidated the remaining fifty-four complaints, recognizing that they "ar[is]e out of a common factual background and present[ed] the same legal issues as the initial [c]omplaints," and ordered them dismissed for untimely filing at the Bergen Board.

The Tax Court considered the motions to dismiss as motions for summary judgment. We apply the same standard as the trial court when reviewing a grant of summary judgment.

Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div.), certif. denied, 154 N.J. 608 (1998). According to the general rule, Rule 4:46-2, summary judgment must be granted if "the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to judgment or order as a matter of law." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995); Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 75 (1954). "An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact." R. 4:46-2(c). The court, however, does not decide issues of fact; rather, it should only determine if such issues exist. Brill, supra, 142 N.J. at 540. Therefore, "when the evidence 'is so one-sided that one party must prevail as a matter of law,' . . . the trial court should not hesitate to

grant summary judgment." Ibid. (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202, 213 (1986)).

In considering a motion for summary judgment, a court will examine all papers on file to determine whether an issue of fact exists. Judson, supra, 17 N.J. at 75. "Bare conclusions in the pleadings, without factual support in tendered affidavits, will not defeat a meritorious application for summary judgment." U.S. Pipe & Foundry Co. v. Am. Arbitration Ass'n, 67 N.J. Super. 384, 399-400 (App. Div. 1961). If a reviewing court determines that there was no genuine issue of fact, the court then examines the trial court's ruling on the law. Walker v. Alt. Chrysler Plymouth, 216 N.J. Super. 255, 258 (App. Div. 1987).

Appellants contend before us that "the Tax Court erred in finding that it did not have jurisdiction." As there are no genuine issues of fact in dispute, we proceed to an examination of the Tax Court's legal conclusions.

Specifically, appellants first argue that "the Tax Court's imposition of a 4:30 p.m. jurisdictional deadline was erroneous." We disagree.

N.J.S.A. 54:3-21(a) provides that, except in a year in which a municipality completes a municipal-wide revaluation or assessment, a taxpayer challenging his or her assessment "may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, appeal to the county board of taxation by

filing with it a petition of appeal[.]”⁵ This statutory filing deadline has been strictly applied. See, e.g., Regent Care Ctr. v. Hackensack City, 18 N.J. Tax 320, 324 (Tax 1999) (“Failure to file a timely appeal pursuant to N.J.S.A. 54:3-21[] . . . is a fatal jurisdictional defect requiring dismissal of the complaint.”). “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.’” Hackensack City v. Bergen Cnty., 24 N.J. Tax 390, 401 (App. Div. 2009) (quoting Horrobin v. Dir., Div. of Taxation, 1 N.J. Tax 213, 216 (Tax 1979)) (affirming Tax Court summary judgment order dismissing county’s untimely 1995 and 1996 appeals). Additionally, “a paper or pleading is considered as filed when delivered to the proper custodian and received by him to be kept on file.” Poetz v. Mix, 7 N.J. 436, 442 (1951).

In the Hackensack decision, the Tax Court held “that statutory tax deadlines are ‘substantive’ or ‘jurisdictional’ statutes of limitation, and that the courts are without authority to extend such deadlines established by the Legislature.” Hackensack, supra, 24 N.J. Tax at 401 (quoting

⁵ This filing deadline is extended to May 1 or forty-five days after the bulk mailing in a year in which a municipality implements a municipal-wide revaluation or assessment.

Horrobin, supra, 1 N.J. Tax at 216). Indeed, reporters are replete with cases dismissing tax appeals filed outside the timeframe of N.J.S.A. 54:3-21. See, e.g., Lamantia v. Howell Twp., 12 N.J. Tax 347, 353 (Tax 1992) (tax appeal received eight months late); Mayfair Holding Corp. v. Twp. of N. Bergen, 4 N.J. Tax 38, 41 (Tax 1982) (upholding county board's dismissal of tax appeal received one day late, despite assurances given by the board's representative that a postmark of the filing date would suffice); Prospect Hill Apartments v. Borough of Flemington, 1 N.J. Tax 224, 228 (Tax 1979) (received one day late).

The procedures governing many aspects of tax appeals are provided for in the Division of Taxation's regulations. N.J.A.C. 18:12A-1.1(a) designates to the local county board of taxation the discretion to set its office's location, which "shall be open each day during the regular prevailing hours of the respective county and/or as otherwise determined by the board." This regulation also reserves to the board the ability and discretion to set extended hours. N.J.A.C. 18:12A-1.1(b). Notably, N.J.A.C. 18:12A-1.20(a) provides that when a tax appeal petition is "actually received by the board after April 1 of the tax year," the board "shall not accept said petition or cross-petition of appeal for filing but shall forthwith return the same to the person filing it."

Form A-1,⁶ the standardized Petition of Appeal promulgated by the Director of the Division of Taxation, places taxpayers – and their attorneys – on notice of the strict April 1 filing deadline. In fact, the first instruction to the taxpayer emphasizes that the appeal must be received by the county board on or before April 1. Furthermore, "[a]n appeal received after the close of business hours on April 1 . . . is untimely filed and will result in dismissal of the appeal."

Reading the statute, its enabling regulations, case law and the materials provided to assist taxpayers in filing appeals reveals the following: the April 1 deadline for filing a tax appeal is strictly construed; untimely filing divests a court of jurisdiction to hear a complaint; each county board has the discretion to set its offices' hours of operations; and such board may not accept petitions filed after close of business on April 1.

Here, the Bergen Board set its close of business at 4:30 p.m., and was operating pursuant to those hours on April 1, 2010. Appellants' courier arrived at 4:37 p.m. and was not allowed past security to file the tax appeals. After the tax

⁶ The Standard Petition Form can be downloaded from the State of New Jersey's Department of the Treasury website, http://www.state.nj.us/treasury/taxation/pdf/other_forms/lpt/pet_appl.pdf (last visited June 25, 2012).

appeals were finally filed on April 5, 2010, the Bergen Board properly denied them as untimely filed. The Tax Court's subsequent dismissal of appellants' complaints for want of subject matter jurisdiction was in line with the long history of strict application of tax appeal filing deadlines.

However, appellants contend that reading the above cited statutes, regulations and policies demonstrates that the imposition of a 4:30 p.m. deadline, rather than merely April 1, results in a stricter deadline than contemplated by the statute. In support, appellants rely on language from O'Rourke v. Twp. of Fredon, 25 N.J. Tax 443, 451 (Tax 2010). There, the Tax Court held that "neither the Director nor the County Board may promulgate rules or regulations that impose an April 1 postmark requirement for service upon the Tax Assessor and Municipal Clerk." Ibid. (emphasis added). That case is readily distinguishable from the case at bar in that the county board had created a specific requirement to meet the deadline – a postmark – that appeared nowhere but in the county board's own instructions. Here, the state-wide requirement of filing by the close of business hours is easily ascertainable from regulations, case law and unambiguous instructions in Form A-1.

Appellants also argue that the Tax Court should have exercised its equitable powers to allow the tax appeals because

they "were in substantial compliance with [the] applicable deadline." We are not persuaded.

The Tax Court has the ability to grant equitable relief "in all causes within its jurisdiction[.]" N.J.S.A. 2B:13-3(a). To "avoid technical defeats of valid claims," courts may apply the equitable doctrine of substantial compliance. Zamel v. Port of N.Y. Auth., 56 N.J. 1, 6 (1970). This doctrine requires the party seeking relief to make a five-part showing:

(1) the lack of prejudice to the defending party; (2) a series of steps taken to comply with the statute involved; (3) a general compliance with the purpose of the statute; (4) a reasonable notice of petitioner's claim, and (5) a reasonable explanation why there was not a strict compliance with the statute.

[Galik v. Clara Maass Med. Ctr., 167 N.J. 341, 353 (2001) (quoting Bernstein v. Bd. of Trustees, 151 N.J. Super. 71, 76-77 (App. Div. 1977)).]

Moreover, "[i]n each case, the court is required to assess the facts against the clearly defined elements to determine whether technical non-conformity is excusable." Galik, supra, 167 N.J. at 354.

Application of those factors here does not lead to a result in appellants' favor. First, the defendant municipalities would suffer prejudice by having to defend tax appeals outside the scope anticipated, i.e., those filed by the statutory deadline. That notion of prejudice is apparent from the legislative intent

recognized in case law holding that "[s]trict adherence to statutory time limitations is essential in tax matters, borne of the exigencies of taxation and the administration of local government." F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 424 (1985).

Next, though appellants have outlined the steps they took to comply with N.J.S.A. 54:3-21, they were unable to file the appeals because the courier did not arrive on time. Hiring multiple couriers and maintaining back-up copies of the tax appeals are demonstrative of significant steps taken, but one simple step – dispatching the couriers earlier – would have substantially changed the outcome. Appellants contend that the Bergen Board's security guard frustrated their attempts to comply, but it is clear from the record that there would have been no problem had Cutolo Law sent out the courier earlier.

On the third factor, looking to appellants' general compliance with the statutory purpose – to ensure timely, predictable filing of tax appeals – such would be frustrated by allowing filing beyond the deadline under these facts as demonstrated by the weight of case law on the subject. Appellants certainly attempted to comply, but their efforts fell short.

Appellants contend they met the fourth prong, reasonable notice of appellants' claim, because the Bergen Board had

reasonable notice that a courier was en route – through the phone calls of Smith and Medolla – and rather than instruct the security guard to allow the courier access to its office, the Bergen Board did nothing to accommodate appellants. Putting aside that this prong looks at reasonable notice to the municipal defendants, not the Bergen Board, appellants' argument fails. Reasonable notice, in this context, was exemplified in an affidavit of merit case where a defendant was not named in an affidavit, but had notice of a claim against him because he had been presented with an expert report discussing his part in the alleged malpractice. Fink v. Thompson, 167 N.J. 551, 564 (2001). Here, though Cutolo Law may have provided the Bergen Board with fifty minutes notice that their courier was running late, it was unreasonable to presume that the Board would make any accommodations. Furthermore, it would be equally unreasonable to presume that the municipal defendants would have had any notice, prior to April 5, 2010, that one hundred additional tax appeals would require a response.

Finally, regarding the factor looking to appellant's reasonable explanation for failing to strictly comply with the statutory deadline, the record indicates that the firm simply sent the courier out too late to get the job done. In a related vein, when discussing situations such as affidavits of merit, where a late filing may be accepted because of extraordinary

circumstances – a situation not provided for under the statutes and regulations at issue here – the Court has noted that "carelessness, lack of circumspection, or lack of diligence on the part of counsel are not extraordinary circumstances which will excuse missing a filing deadline." Palanque v. Lambert-Woolley, 168 N.J. 398, 405 (2001) (quoting Burns v. Belafsky, 326 N.J. Super. 462, 470 (App. Div. 1999)) (discussing the Court's implicit adoption of this standard), overruled on other grounds, 166 N.J. 466 (2001). Thus, appellants' argument fails in as much as it contends that the taxpayers should not be punished for errors of its attorneys. On balance, these factors militate against finding that appellants substantially complied with N.J.S.A. 54:3-21.

Citing a lack of uniformity among the various county taxation boards, appellants also argue that the Tax Court "should toll the Board's self-created 4:30 p.m. 'deadline' for seven (7) minutes." We reject this argument.

In White v. Violent Crimes Comp. Bd., 76 N.J. 368, 379 (1978), the Court held that "in the case of a statutorily created right, a 'substantive' limitation period may appropriately be tolled in a particular set of circumstances if the legislative purpose underlying the statutory scheme will thereby be effectuated." A substantive limitation period,

contrasted with one deemed procedural, serves to "extinguish the underlying right as well as to bar the remedy." Id. at 374.

For purposes of determining whether a substantive limitation provision may be tolled, there is no significant difference between such a restriction on administrative action and a comparable restriction on the enforceability of a claim in a court of law. Both in effect are restrictions on what is often imprecisely termed the "jurisdiction" of the forum to provide the particular relief authorized by the Legislature. Whether the substantive limitation period applies to administrative or judicial action, the focus of the judicial inquiry must remain on the question of legislative intent.

[Id. at 387.]

In Hackensack Water Co. v. Div. of Tax Appeals, 2 N.J. 157, 166 (1949), the Court explained that "[t]he entire legislative scheme [for tax appeals] is to provide a review of assessment valuations, on appeal of either the taxpayer or taxing district[.]"

As discussed above, courts have routinely refused to relax tax appeal filing deadlines. In Prospect Hill Apartments, supra, 1 N.J. Tax at 226, the taxpayer, trying to meet the then-deadline of August 15, had mailed its appeal on August 14 from Elizabeth to Trenton. It was received on August 16. Ibid. The Tax Court rejected the taxpayer's argument that it could sua sponte relax the statutory deadline, N.J.S.A. 54:3-21, because Rule 1:1-2 does not allow a court to "relax or dispense with a

statute of limitations passed by the Legislature and approved by the Governor." Id. at 227. Although the Tax Court agreed that its own powers were greater than those of county taxation boards, and that "jurisdictional statutes of limitations may be tolled by courts in appropriate circumstances 'if the legislative purpose underlying the statutory scheme will thereby be effectuated[,]'" the court found the plaintiff's lack of due diligence – waiting to mail until the day before – precluded tolling the deadline. Ibid. (quoting White, supra, 76 N.J. at 379).

Here, it is clear that the April 1 deadline is a statute of limitations in that it cuts off any further avenue for appeal of an adverse tax assessment. Moreover, tolling for seven minutes on this occasion would only open the door to tolling for fourteen minutes the next time the issue comes around. This is why Judge Andresini repeatedly stated at the motion hearing that what appellants were seeking, in essence, was tolling until 11:59:59 p.m. on April 1. As observed in O'Rourke, supra, 25 N.J. Tax at 451, such a holding – on facts devoid of extraordinary, unforeseeable circumstances beyond the control of any parties – "would require the court to engraft" upon a piece of legislation a requirement not found in the statute and would usurp the power designated to the Director of the Division of

Taxation and the county boards to regulate the timely filing and processing of tax assessment appeals. We decline to do so.

The lack of unanimity in the twenty-one county tax boards' hours of operation, though perhaps an inconvenient procedural hurdle for practitioners in this field, is not a sufficient, independent ground under these facts to ascribe error to the Tax Court. As discussed above, duly promulgated regulations give county boards the authority to set their hours of operation. There is no contention that appellants' delay here was caused by confusion stemming from an earlier closing time in Bergen County than in Burlington County. Indeed, Cutolo was aware of the Bergen Board's closing time, as he averred in oral argument before this court and as evidenced by his instruction to the couriers that they complete all deliveries before 4:00 p.m. to allow them some leeway.

Appellants also contend that the Tax Court erred by granting the motions to dismiss as the Bergen Board "failed to turn square corners." We disagree.

"The government must 'turn square corners' in its dealings with the public." New Concepts for Living, Inc. v. City of Hackensack, 376 N.J. Super. 394, 401 (App. Div. 2005) (quoting F.M.C. Stores, supra, 100 N.J. at 426). Put simply, this means that the government should "not conduct itself so as to achieve or preserve any kind of bargaining or litigational advantage

over the property owner." F.M.C. Stores, supra, 100 N.J. at 427. Additionally, application of the doctrine "cannot be exercised or withheld rigidly, but [is] always subject to the guiding principles of fundamental fairness." New Concepts, supra, 376 N.J. Super. at 404.

Cases applying the square corners doctrine tend to involve misrepresentations by a government employee or unfair treatment by a municipal board. In New Concepts, we relied on the square corners doctrine in reversing the Tax Court's dismissal of a taxpayer's untimely appeal arising from his failure to update his tax exemption status. Ibid. The panel viewed the city's failure to include the proper exemption notice in a mailing to the taxpayer, and the city's initial indications to him that the matter could be resolved retroactively – before summarily reversing that position – demonstrated that "the City did not act with the fundamental fairness required of it under the square corners doctrine[.]" Ibid.

In F.M.C. Stores, supra, 100 N.J. at 421, municipalities appealed an adverse ruling by this court reversing a Tax Court decision that had allowed municipalities to file untimely responsive appeals of assessments that taxpayers had timely petitioned against. In affirming the Appellate Division, the Court discussed the application of the square corners doctrine, noting that the government's "primary obligation is to comport

itself with compunction and integrity[.]" Id. at 427. Viewing the municipality's actions as seeking to "achieve a tactical advantage" over the taxpayer, the Court applied the doctrine to prevent the municipality from filing an appeal after the statutory deadline. Ibid.

In Lowe's Home v. City of Millville, 25 N.J. Tax 591, 594 (Tax 2010), the Tax Court rejected as a failure to turn square corners a municipality's attempted rescission of a tax exemption and abatement owing to a late taxpayer filing because the tax assessor had provided the taxpayer incorrect information necessary to maintaining the exemption. Noting that the application of the square corners doctrine "'is not dependent on a finding of bad faith,'" the Tax Court found that the municipality failed to turn square corners in its attempted rescission because it had many prior opportunities to determine the assessor's error, but failed to do so. Id. at 604-05 (quoting CBS Outdoor, Inc. v. Borough of Lebanon Planning Bd., 414 N.J. Super. 563, 586-87 (App. Div. 2010)).

Here, there is no ground for application of the square corners doctrine. Unlike the above cited cases, there was no government action taken with the aim of gaining an advantage over appellants, or actions taken by appellants in good faith reliance upon the Bergen Board's representations. Rather than any misfeasance or nonfeasance on its part, the Bergen Board

simply followed its procedure of closing at 4:30 p.m. Though it may be prudent to keep longer hours the day that tax appeals are due, that decision is clearly within the Bergen Board's discretion. Because it would have been much more prudent for Cutolo to have sent the appeals with a courier hours or days earlier, there is nothing to indicate the Bergen Board's decision to close at its normal time, before a holiday weekend, was an attempt to gain an advantage in later litigation. Moreover, this is not a situation where the Bergen Board promised or misled appellants into believing that the 4:30 p.m. deadline would be extended because the courier was running late or the office was exceptionally busy.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION