

Guidelines for use of 33 Nonusable Categories used in development of the Director's Table of Equalized Valuations

Based on regulations N.J.A.C. 18:12-1.1 Adopted December 19, 2017



**Issued by
Property Administration – Local Property
Division of Taxation – Department of the Treasury
State of New Jersey**

New Jersey Administrative Code Title 18 Chapter 12
Subchapter 1. Categories of Non-usable Deed Transactions

18:12-1.1 Categories enumerated:

- (a) The deed transactions of the following categories are not usable in determining assessment-sales ratio pursuant to N.J.S.A. 54:1-35.1 et seq.:
1. Sales between members of the immediate family; 5
 2. Sales in which “love and affection” are stated to be part of the consideration;..... 6
 3. Sales between a corporation and its stockholder, its subsidiary, its affiliate or another corporation whose stock is in the same ownership; 7
 4. Transfers of convenience; for example, for the sole purpose of correcting defects in title, a transfer by a husband either through a third party or directly to himself and his wife for the purpose of creating a tenancy by the entirety, etc;..... 8
 5. Transfers deemed not to have taken place within the sampling period. Sampling period is defined as the period from July 1 to June 30, inclusive, preceding the date of promulgation, except as hereinafter stated. The recording date of the deed within the period is the determining date since it is the date of the official record. Where the date of deed or the date of formal sales agreement occurred prior to January 1, next preceding the commencement date of the sampling period, the sale shall be nonusable; 9
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 7. Sales of property substantially improved subsequent to the assessment and prior to the sale thereof; 13
 8. Sales of an undivided interest in real property; 16
 9. Sales of properties that are subject to an outstanding Municipal Tax Sales Certificate, a lien for more than one year in unpaid taxes on real property pursuant to N.J.S.A. 54:5-6, or other governmental lien; 17
 10. Sales by guardians, trustees, executors and administrators; 18
 11. Judicial sales such as partition sales; 20
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19. Sales of property whose assessed value has been substantially affected by demolition, fire, documented environmental contamination, or other physical damage to the property subsequent to assessment and prior to the sale thereof;	30
20. Acquisitions, resale or transfer by railroads, pipeline companies or other public utility corporations for right-of-way purposes;	31
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27. Sales occurring within the sampling period but prior to a change in assessment practice resulting from the completion of a recognized revaluation or reassessment program, i.e. sales recorded during the period July 1 to December 31 next preceding the tax year in which the result of such revaluation or reassessment program is placed on the tax roll;	41

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29. Sales of properties subsequent to the year of appeal where the assessed value is set by court order, consent judgment, or application of the “Freeze Act;”	44
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31. First sale after foreclosure by a Federal or State chartered financial institution;	53
32. Sale of a property in which an entire building or taxable structure is omitted from the assessment;	54
33. Sales of qualified farmland or currently exempt property.	55
(b) Transfers falling within the foregoing category numbers 1, 3, 9, 10, 15, 17, 26, and 28 (under section (a) above), should generally be excluded but may be used if after full investigation it clearly appears that the transaction was a sale between a willing buyer, not compelled to buy, and a willing seller, not compelled to sell, with all conditions requisite to a fair sale with the buyer and seller acting knowledgeably and for their own self-interests, and that the transaction meets all other requisites of a usable sale.	56

1. Sales between members of the immediate family;

Sales between relatives tend to be sold for less than market value. A transfer between relatives adds a dimension to the transaction that is not present between unrelated parties.

Family relationships are recognized in the Realty Transfer Fee Law. Proof of a Family Relationship may be stated in the “Affidavit of Consideration” required by the Realty Transfer Fee.

- *The Assessor should provide the familial relationship in the comment section of the SR1A.*

2. Sales in which “love and affection” are stated to be part of the consideration;

This category is applicable when the phrase “love and affection” is stated on the deed as part of the sales price

Market value requires the price to be expressed as a dollar amount. Since “love and affection” cannot be converted to a dollar amount, these transactions would not meet the criteria of market value.

3. Sales between a corporation and its stockholder, its subsidiary, its affiliate or another corporation whose stock is in the same ownership;

Sales between corporate affiliates generally do not reflect market value due to their established relationship to each other.

Corporations or partnerships with similar names do not indicate a relationship. An investigation would be required to verify if both LLCs/LPs contain similar parties.

- *Assessors should indicate in the comments section of the SR1A the affiliation between the parties.*

4. Transfers of convenience; for example, for the sole purpose of correcting defects in title, a transfer by a husband either through a third party or directly to himself and his wife for the purpose of creating a tenancy by the entirety, etc;

These transfers are most commonly used to make a technical change in the title. The sale price is usually for a nominal amount.

Many of the transfers are referred to as a “rerecord,” where the deed is rerecorded to correct an error in the original recorded deed.

The deed type, a statement of interest transferred, or the relationship of the buyer and the seller will identify some of these sales.

Rerecorded deeds are recognized in the Realty Transfer Fee Law. The “Affidavit of Consideration” will often specify the exact nature of the change in title.

5. Transfers deemed not to have taken place within the sampling period. Sampling period is defined as the period from July 1 to June 30, inclusive, preceding the date of promulgation, except as hereinafter stated. The recording date of the deed within the period is the determining date since it is the date of the official record. Where the date of deed or the date of formal sales agreement occurred prior to January 1, next preceding the commencement date of the sampling period, the sale shall be nonusable;

The sampling period is established using a fiscal year, with deeds having a recording date of July 1st to June 30th. The deed date must not precede the July 1 recording date by more than 6 months (January 1st).

Sales are non-usable under this category if:

- a) the recording date is outside the July 1st to June 30th sampling period, or
- b) the deed date is more than 6 months prior to the July 1st recording date of the sampling period (January 1st).

2020 Sampling Period



REFERENCES:

LPT News. Nonusable Deed Transaction Sept-Oct 1980:2

Town of Secaucus vs. Director, Division of Taxation,
Tax Appeals Docket No. S.A. 16-72.

1972 – specifically bars sales after or before cut-off date. It is necessary to have a cutoff date in order to finalize the Table.

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**CATEGORY NO.5, NONUSABLE
DEED TRANSACTIONS**

There are twenty-seven categories* of deed transactions considered non usable by the Director of the Division of Taxation in determining assessment-sales ratios pursuant to C. 86. P.L. 1954. Of the twenty-seven categories, Category No.5 is perhaps the most misinterpreted.

As approved by the Director, Category No.5 reads as follows:

"Transfers deemed not to have taken place within the sampling period. Sampling period is defined as the period from July 1 to June 30, inclusive, preceding the date of promulgation, except as hereinafter stated. The recording date of the deed within this period is the determining date since it is the date of official record. Where the date of deed or date of formal sales agreement occurred prior to January 1, next preceding the commencement date of the sampling period, the sale shall be non-usable."

There are thus two dates involved in determining the usability of a sale:

- a) The recording date must occur in the current fiscal year from and including July 1st through June 30th.
- b) The deed date or contract of sale date must have occurred within the time period which includes the same. fiscal year plus the six months immediately preceding the fiscal year. Graphically this can be shown as follows for the sampling period ending on June 30, 1980:

----1979			1980 ----		
JAN	JUNE JULY	DEC JAN	JUN JUL Y	OCT 1	
Recording Date (July 1, 1979- June 30, 1980)			Date of Promul gation of Director's Table		
Deed Date (Jan. 1, 1979 - June 30, 1980)					
EXAMPLES OF USABLE SALES			EXAMPLES OF NONUSABLE SALES		
July 2, 1979	Deed Date	December 31, 1979			
July 3, 1979	Recording Date	July 1, 1980			
June 28, 1979	Deed Date	January 5, 1980			
July 2, 1979	Recording Date	July 2, 1980			
	Contract of Sale Date	December 29, 1979			
January 4, 1979	Deed Date	November 20, 1978			
June 28, 1980	Recording Date	May 5, 1980			

*revised to 33 nonusable categories in 2005

6. Sales of property conveying only a portion of the assessed unit, usually referred to as apportionments, split-offs or cut-offs; for example, a parcel sold out of a larger tract where the assessment is for the larger tract;

These kinds of transfers lead to an inaccurate ratio because what was sold was only a portion of what was assessed.

When creating the SR1A, it is important to use the assessment from the tax list for the year the property was sold. The block and lot assessment should be that of the original parcel assessed.

- Assessors should reference the newly created block and lot in the comments section of the SR1A.

REFERENCES:

LPT News. Non-usable Deed Transaction April 1965:2

Kearny v Division of Tax Appeal 35 N.J. 299 173 A.2d 8 (Supreme Court of New Jersey)
1961 - Split-off -

Cranbury Township v Middlesex County Board of Taxation 6 N.J. Tax 501
1984 - Split-off – as of the date of sale the sales price of the parcel could not be related to an identical parcel that had been assessed for that tax year so the sale could not be used in arriving at the equalization ratio.

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April, 1965

**NON-USABLE DEED TRANSACTIONS
CATEGORY NO.6**

Category No. 6 of the list of Categories of Non-usable Deed Transactions provides that "sales of property conveying only a portion of the assessed unit, usually referred to as apportionments, split offs or cutoffs; for example, a parcel sold out of a larger tract where the assessment is for a larger tract" are non-usable in determining assessment-sales ratios for use in the Table of Equalized Valuations.

Assessors have little difficulty in the application of Category No.6. In the normal instance the parcel being conveyed is a portion of the parcel assessed and, therefore, the parcel being conveyed falls within Category No.6.

Frequently, however, the proper information regarding these sales is not set forth in Section Two of the SR-1A. Very often an assessor will insert the block and lot numbers which will be given in the future to that portion of the original property which is being conveyed. The assessor should always insert the block and lot numbers which appear in the present tax list; that is, the block and lot number should be that of the whole original parcel assessed. The assessor should also insert the original assessment for the entire parcel assessed and not substitute for this the new assessment which will be given to the particular position that is conveyed.

Assessors may gain valuable information from reviewing sales coming within non-usable Category No. 6 by noting the particular trends that these sales produce. Although these sales are non-usable in determining assessment-sales ratios, the selling prices are, in most cases, indicative of market value.

7. Sales of property substantially improved subsequent to the assessment and prior to the sale thereof;

These kinds of transfers lead to an inaccurate ratio because what was sold is not accurately reflected in the assessment. If the property was substantially improved, then an added assessment or assessment increase may be necessary.

Use of this category requires a substantial added assessment or assessment increase. As a general rule of thumb, approximately 10% of the building assessment is considered substantial.

New construction is generally non-usable due to the building improvement not being assessed prior to the October 1 assessing date. If the improvement assessment was added and the property is fully assessed, then the SR1A should be usable.

- Assessors must provide the amount, date and nature of the assessment change in the comments section of the SR1A. Estimated increases are acceptable, but may be verified the following year.

REFERENCES:

Further definitions of structure and improvement are found in:

Howell Township v Monmouth County Board of Taxation and US Home Corporation. 18 N.J. Tax 149 (N.J. Tax 1999)
Harrison Realty Corp v Town of Harrison. 16 N.J. Tax 375 (N.J. Tax 1997) aff'd 17 N.J. Tax 174 (app. Div. 1997), cert den. 153 N.J. 213 (1998)
Michael Otelsberg v Bloomfield Tp. 18 N.J. Tax 243 (N.J. Tax 1999)

<u>LPT News.</u> Non-Usable category 7	(reprint)	May-June	1990:2
<u>LPT News.</u> SR6 Be Thorough		July-Aug	1990:3

State of New Jersey
LOCAL PROPERTY BRANCH NEWS

LPT News. Nonusable category 7 (reprint) May-June 1990:2

Department of the Treasury



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50 Barrack Street, Trenton, N.J. 08646

May-June 1990

**SALES RATIO:
NON-USABLE CATEGORY NO.7**

(Editor's note: The contents of this article are reprinted from the September-October 1973 issue of the Local Property Branch News.)

Category No.7 on the list of Non-usable Deed Transactions, "Sales of property substantially improved subsequent to assessment and prior to the sale thereof" has remained over the years, a course of misunderstanding, particularly in the area of its correct application. The Nonusable Categories include twenty-seven types of deed transactions which are deemed to be non-usable in determining assessment-sales ratios for inclusion in the Table of Equalized Valuations.

In determining whether a transaction is to be considered as an "N.U.-7." two pertinent factors must be explored:

1. The time interval;
2. Correct interpretation of the phrase "substantially improved."

Time Interval

In order to be considered non-usable under Category No.7, the improvement must have taken place after the statutory assessment date and before the date of the sale. In other words the improvement must have taken place during the period of time between October 1 of the pretax year and the actual date of sale of the property.

Thus, the sale of a property in July of the tax year 1990, which included a garage added to it during September, 1989 does not meet the provisions of Category No.7. insofar as the improvement took place before October 1, 1989, at which time the tax assessor should have increased the assessment to reflect the increased value of the property.

If the seller of a property makes a substantial improvement before the sale of the property and subsequent to the October 1 assessing date, the sales price is obviously affected by the improvement and the transaction is deemed to be non-usable under Category No.7. However, if an improvement is made by the buyer after the sale date the usability of the sale is not affected insofar as the sales price reflected the value of the property without the improvement.

Substantial Improvement

The improvement must have been a substantial one.

Replacements such as new doors or windows, refurbishing such as painting and minor additions such as a new picket fence are not considered substantial improvements. "Substantially improved" means that there were important improvements having considerable value made to the property. Substantial improvement does not refer to normal "dressing-up" maintenance and repair.

Assessors can ensure that sales which they believe to be non-usable under Category No.7 are correctly verified by setting forth proper and thorough data on Section Two of the SR-1A or on the SR-6. This data includes the nature of the improvement, the approximate cost, the time in which the improvement was made, and the source of the information.

It is not common for an assessor to list "NU 7" as the basis for non-usability of a particular sale, without explanation. In instances such as this, a request for non-usability under Category No.7 cannot be considered.

Careful attention to these directives has far-reaching effects, most notable of which is increased accuracy in the Table of Equalized Valuations.

State of New Jersey
LOCAL PROPERTY BRANCH NEWS

**LPT News. SR6 Be
Thorough July-**

Aug 1990:3

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July-Aug. 1990

**ASSESSORS: BE THOROUGH WHEN
FILING THE SR-6 FORM**

Whenever a municipal tax assessor deems an SR-1A on a grantor listing to have been improperly evaluated, he or she may file a request for revision (form SR-6). (Section 1002.38 of the Handbook for New Jersey Assessors describes the trail of the SR-6 in detail.) However, in many instances, when the tax assessor inserts the "reason for change," the statement which describes the basis for requesting any revisions is vague and lacking in detail.

For example, if an assessor requests that a sale be rendered as a Non-usable Category 7: that is, a "Sale of property substantially improved subsequent to assessment and prior to the sale thereof," he or she must definitively present the date upon which the building or the substantial improvement was completed, and the amount of the added assessment which will be placed on the tax lists. (Please refer to "Non-usable Category 7" article in the May-June 1990 Local Property Branch News.)

When it is received, the Local Property Branch reviews the SR-6 and either approves or disapproves the request. It behooves the conscientious tax assessor to be concise and specific when providing an explanation as to the reasons any revisions to the monthly lists of sales are being requested.

8. Sales of an undivided interest in real property;

This kind of transaction leads to an inaccurate ratio because only a percentage of ownership is being transferred and the assessment reflects the property as a whole.

Multiple parties may sell their percentage of ownership for a property. If the aggregate percentage of ownership that is being transferred equals 100%, then the SR1A cannot be excluded under this category.

- *Assessors should reference the percentage of interest being transferred in the comments section of the SR1A.*

9. Sales of properties that are subject to an outstanding Municipal Tax Sales Certificate, a lien for more than one year in unpaid taxes on real property pursuant to N.J.S.A. 54:5-6, or other governmental lien;

Due to the lien(s), the property owner may be under significant duress to sell. These transactions generally do not fit the definition of a willing seller.

In order for the unpaid lien(s) to be considered substantial, the sale must be subject to lien(s) equal to at least one year's worth of real estate taxes.

If an investor obtains possession of a property through a judgment due to unpaid lien(s), then the transfer should be designated non-usable under category 11.

A transfer of title for delinquent taxes may be noted on the Affidavit of Consideration for Realty Transfer Fee.

10. Sales by guardians, trustees, executors and administrators;

A conveyance by an executor or a testamentary trust generally does not represent an arm's length transaction. Sales from an estate may be made to satisfy the debts or the wishes of the deceased.

Sales of property where title is held by a "living trust" are generally usable and should not be excluded under this category as there is no compulsion on the parties to sell or dissolve the living trust.

In some instances, evidence of transfer of title by an executor may be stated in the Affidavit of Consideration for Realty Transfer Fee or the Seller's Residency Certification.

Sales where the grantor acquired the property through inheritance is not considered non-usable under this category.

- *If the transaction reflects fair market value and should be usable, please indicate so in the comments section of the SR1A.*

REFERENCES:

LPT News. Non-usable deed transaction July-August 1974:2

Township of Clinton v Hunterdon County Board of Taxation – Division of Tax Appeals.
September 4, 1975

1975 – sale was made by an executor and was not usable in determining assessment – sales ratios.

Borough of Roosevelt v Director, Division of Taxation – Division of Tax Appeals
January 30, 1978

1978 – property was in extremely poor condition and completely in disrepair. Heir resided in California, the real property was vacant and subject to deterioration and vandalism. Property was sold in "as is" condition.

State of New Jersey
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July-August 1974

**LPT News. Non-
usable deed
July-**

West State and Willow Streets. Trenton. New Jersey 08625

**transaction
August 1974:2**

**NON-USABLE DEED TRANSACTIONS
CATEGORY NO. 10**

Category No. 10 of the list of Non-usable Deed Transactions provides that "sales by guardians, trustees, executors and administrators" are non-usable in developing assessment-sales ratios for use in the Table of Equalized Valuations.

The intent of Category No. 10 is to eliminate from the sales ratio study those sales made by guardians, trustees, executors and administrators because of the fact that the sales price in such transactions may not reflect the true market value of the property sold since the price agreed upon is often one which would most expeditiously dispose of an estate.

Sales of this type, however, are not to be confused with sales where it is indicated that the grantor had acquired the property by inheritance, such as "by L.W.T. (Last Will and Testament) of " or "as devisee of the estate of " This type of sale, unless found non-usable for some other reason, will normally be deemed a usable sale and included in the assessment sales ratio study.

11. Judicial sales such as partition sales;

A judicial sale or court ordered sale is characterized by compulsion and does not represent the motivation of a typical seller in an arms-length transaction.

This category is applicable only when a docket number from the judgment is provided.

In some instances, sales of this nature may be identified using the Affidavit of Consideration for Realty Transfer Fee or the Seller's Residency Certification.

- Assessors should indicate in the comments section of the SR1A the docket number.

12. Sheriff's sales;

A sheriff's sale is a transaction in which the proceeds from the sale are used to pay mortgage lenders, banks, tax collectors, and other litigants who have lost money on the property. The sales price is usually based upon the debt carried by the seller and is not negotiated between the buyer and seller based on the market conditions at the time of the sale.

REFERENCES:

Pennsville v Salem County Board of Taxation. Docket No. E.A. 3 Division of Tax Appeals.
affirmed Superior Court Appellate Division (A210 – 68) 3/3/69
1969 – The county board of taxation did not err by excluding a sale from a bank to an individual by the sheriff

13. Sales in proceedings in bankruptcy, receivership or assignment for the benefit of creditors and dissolution or liquidation sales;

In sales proceedings in bankruptcy, receivership, dissolution, liquidation, or short sale, the sales price is not determined by market factors. Sales for the benefit of creditors indicate compulsion and not a willing seller.

Sales of property in receivership, bankruptcy and liquidation may sometimes be identified from the Affidavit of Consideration for Realty Transfer Fee or the Seller's Residency Certification.

- Assessors should indicate in the comments section of the SR1A where the short sale information was attained (eg, MLS listing #, attorney, deed). If it's a bankruptcy, the docket number should be provided.

REFERENCES:

Memo. NU13 - Short Sales

October 24, 2012

Almax Builders, Inc. v Perth Amboy. 1 N.J. Tax 31

Seller under greater economic compulsion to sell than hypothetical "willing seller" - where sale of a property was by an owner who simply walked away from a building, mortgage foreclosure was imminent and seller was under pressure to consummate transaction, such circumstances indicated that sales price was not necessarily indicative of true value of property for tax assessment purposes.



State of New Jersey

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Governor

KIM GUADAGNO
Lt. Governor

DEPARTMENT OF THE TREASURY
DIVISION OF TAXATION
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ANDREW P. SIDAMON-ERISTOFF
Acting State Treasurer

MEMORANDUM

To: Municipal Tax Assessors, County Tax Assessor, LPT Field Staff

From: Judy P. Miller
Chief, Valuation & Mapping- LPT 

Date: October 24, 2012

Subject: NU 13 - Short Sales

Beginning with the 2012-2013 sampling period, short sales should be classified as NU13. The inclusion of short sales under NU13 will help relieve the overuse of category NU26.

Short sales are deemed to be those transfers that require third party approval (banks etc.). These are transfers where the sales price is less than the debts secured by liens against the property.

Justification for exclusion of these sales must be documented by noting "MLS" listing, verifying party (grantor/ grantee/ atty. – include name & phone #) etc.

JPM:mg

14. Sales of doubtful title including, but not limited to, quit claim deeds;

This category includes all sales of doubtful title, whether or not a quitclaim deed form is involved. Usually “sales of doubtful title” tend to be below market value.

A quitclaim deed is one which conveys nothing more than the grantor’s interest in the property rather than the property itself.

15. Sales to or from the United States of America, the State of New Jersey, or any political subdivision of the State of New Jersey, including boards of education and public authorities;

Sales to or from any governmental agency usually involves an element of compulsion. Also, sales by government of surplus property or redevelopment sites tend to sell for less than market value.

Both the assessed value and the sales price need to be examined closely. Government agencies usually do not pay taxes. So the assessment may not be closely scrutinized or maintained, which can lead to some inaccuracies.

16. Sales of property assessed in more than one taxing district;

The property assessment may be apportioned in multiple districts, meaning that a taxing district's assessment for the property being conveyed may not reflect the property as a whole, leading to a distorted ratio.

It is important to determine that the property being conveyed is assessed and not merely located in more than one taxing district. In some cases, a municipality may agree to have a property assessed solely in one taxing district. In that instance, the category 16 code is not applicable.

- Assessors should indicate in the comments section of the SR1A the municipality and block/lot of the other parcel being conveyed.

REFERENCES:

LPT News. Non-Usable deed transaction

October 1965:2

State of New Jersey
LOCAL PROPERTY TAX BUREAU NEWS

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Division of Taxation

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NON-USABLE DEED TRANSACTIONS
CATEGORY NO. 16

Category No. 16 of the list of Non-usable Deed Transactions provides that "sales of property assessed in more than one taxing district" are non-usable in developing assessment - sales ratios for use in the Table of Equalized Valuations.

It is important to determine that the property in question is *assessed* and not merely located in more than one taxing district before applying Non-usable Category No. 16. There are instances where a parcel of real property is located in more than one taxing district but by resolution the municipalities in which the property is situated have agreed that the assessment will be made by one of the municipalities. In this instance there is no basis for the application of Non-usable Category No. 16 as the assessment reflects the value of the entire parcel notwithstanding the fact that the entire parcel is not located within the boundaries of the municipality levying the assessment.

17. Sales to or from any charitable, religious, or benevolent organization;

A sale to a non-profit organization may involve an element of philanthropy on the part of a seller. A sale from a non-profit organization may involve a nominal consideration or restrictive covenants.

Both the assessed value and the sales price of property transferred to and from exempt entities should be examined closely. Assessments should be maintained on exempt line items.

If the transferred property is owned by a non-profit entity, but not used for a charitable or educational purpose, a thorough investigation must be conducted to determine usability.

18. Transfer to banks, insurance companies, savings and loan associations, mortgage companies when the transfer is made in lieu of foreclosure where the foreclosing entity is a bank or other financial institution;

When a transfer is made in lieu of foreclosure or in fulfillment of a judgment, the transfer is nonusable for sales ratio purposes. Transfers of this nature are deemed to have been made under compulsion and do not meet the definition of a willing seller.

These sales can be identified by an examination of the deed, the Affidavit of Consideration for Realty Transfer Fee and the Seller's Residency Certification.

19. Sales of property whose assessed value has been substantially affected by demolition, fire, documented environmental contamination, or other physical damage to the property subsequent to assessment and prior to the sale thereof;

It is important to note that the damage/contamination must have occurred subsequent to the October 1 assessment date and is not reflected in the assessment.

In order for a sales transaction to be regarded as non-usable under this category, the characteristics of the property assessed must not correlate with the property characteristics of the property as sold

If an improvement was demolished prior to the sale, then the sale is non-usable because the assessment does not reflect vacant land.

When demolition occurs after the sale, the sale is usable unless another category is applicable.

- Assessors should indicate in the comments section of the SR1A the nature and date of damage, demolition or contamination.

REFERENCES:

Westampton Township v Director, Division of Taxation Docket 011595-93
1993 - Correlation of property characteristics of the property at the time of the assessment and at the time of the sale - Service station – was it contaminated or was it clean at time of assessment and at time of sale?

20. Acquisitions, resale or transfer by railroads, pipeline companies or other public utility corporations for right-of-way purposes;

Once a path is designated by the defining agency, there is little room for deviation. As a result, property owners are compelled to sell or possibly face condemnation.

Even though they are required to pay fair market value, there are other considerations that complicate these transfers. As a result, these transactions do not meet the definition of a willing buyer and willing seller and are always excluded.

21. Sales of low/moderate income housing as established by the Council on Affordable Housing;

Sales of this nature do not meet the standard of a market transaction due to the regulations governing the assessed value and the sales price.

Low/moderate income housing properties are assessed using a formula that makes the assessment an exception to the “same standard of value.” Additionally the sales price of such property is restricted by COAH regulations.

Therefore, in the case of low/moderate income housing, neither the assessed value nor the sales price represents fair market value.

These sales can be identified by an examination of the deed, the Affidavit of Consideration for Realty Transfer Fee and the Seller’s Residency Certification.

➤ Assessors should indicate in the comments section of the SR1A that the transfer is of low/moderate income housing.

22. Transfers of property in exchange for other real estate, stocks, bonds or other personal property;

Part of the definition of market value is “the price in terms of cash.” Items taken in trade cannot be readily converted to cash terms to determine sales price reflects market value.

In an exchange, the buyer gives the seller one or more items of real or personal property as all or part of the consideration without defining the sales price in terms of cash.

1031 Exchanges may be designated as NU22 only if the investigation revealed that the 1031 exchange had a significant impact on the sale.

23. Sales of commercial or industrial real property which include machinery, fixtures, equipment, inventories, or goodwill when the values of such items are indeterminable;

Part of the definition of market value is “the price in terms of cash.” Items included with the real property cannot be readily converted to cash terms to determine the sales price of the real property alone.

A ratio developed from a sales price that included both real and personal property and an assessment for only the real property would distort the ratio.

The personal property included in the transaction must be substantial in order for this category to be applicable.

It should be pointed out that the Category No. 23 is only applicable to sales of property that are classified as commercial or industrial. This category is not applicable to sales of other classes of property.

- *Assessors should indicate in the comments section of the SR1A the items of value that were included in the sale and the source of the information.*

REFERENCES:

LPT News. Non-usable Deed Transaction June-July 1965:2

Town of Newton v. Sussex County Board of Taxation, Division of Tax Appeals.

Case No. 7 Calendar of May 26, 1961

1960 – Sale included property in Williamstown, MA and Newton, NJ priced at \$3.3 million with \$2 million paid at closing. The sale included land, buildings patents, trademarks, customer lists, machinery and all that had to do with the conduct of the business. Break-down provided – for all the acquired assets except inventory was \$2,159,000 and for inventory a sum not to exceed \$1,250,000.

Township of Cinnaminson, Burlington County vs. Director, Division of Taxation Division of Tax Appeals. E.A. 1 – 73. Cinnaminson vs. Burlington County Bd. of Taxation – Township of Willingboro, April 10, 19(xx), Opinion On Remand, Docket No E.A. 1 – 73

1973- the sale included a trailer supported on columns of cinder blocks and clearly not anchored or attached to the ground. It was determined that the trailer met the criteria for determining personal property.

Union Township v Director, Division of Taxation 1 N.J. Tax 15

176 N.J. Super. 239, 422 A2d 803

1980 - Personal Property value was indeterminable - sale of a commercial property where an allocation has been made between the real property and personal property and the values are indeterminable.

**State of New Jersey
LOCAL PROPERTY TAX BUREAU NEWS**



Department of the Treasury

Division of Taxation

314 E. STATE STREET, TRENTON, NEW JERSEY

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**NON-USABLE DEED TRANSACTIONS
CATEGORY NO. 23**

Category No. 23 of the list of Categories of Non-Usable Deed Transactions provides that "sales of commercial and industrial real property which include machinery, fixtures, equipment, inventories, goodwill, when the values of such items are indeterminable" are non-usable in developing assessment sales ratios for use in the Table of Equalized Valuations.

In all instances where items such as those mentioned above are included in the sales price, an effort should be made to determine the value of such items before applying non-usable Category No. 23. The mere fact that such items are included in the sales price does not of itself make the sale non-usable.

It should be pointed out that Category No. 23 is only applicable to sales of property that are classed commercial or industrial. This Category is never applicable to sales of other classes of property.

24. Sales of property, the value of which has been materially influenced by zoning changes, planning board approvals, variances or rent control subsequent to the assessment and prior to the sale;

Acquisition of a zoning variance or planning board approvals may substantially influence the value of a property. The date of acquisition of the zoning variance or plan approvals and the assessing date need to be sequenced in relation to the sale date to determine if this non-usable category should be applied.

This category is only applicable when there is going to be a substantial change in the assessment.

- Assessors should indicate in the comments section of the SR1A a description, date, and the change in assessment due to approval, variance, zoning change, or rent control.

REFERENCES:

LPT News. Non-usable Deed Transaction May 1965:2

Township of Clinton v Hunterdon County Board of Taxation – Division of Tax Appeals – Sept 4, 1975

1975 - A sale was non-usable where the value of the property was materially influenced by zoning changes which occurred between the date of the assessment and the date of sale.

State of New Jersey
LOCAL PROPERTY TAX BUREAU NEWS

Department of the Treasury



Division of Taxation

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Non-Usable Deed Transactions
Category No. 24

Category No. 24 of the list of Categories of Non-Usable Deed Transactions provides that "sales of property, the value of which has been materially influenced by zoning changes where the latter are not reflected in current assessments" are non-usable in determining assessment sales ratios for use in the Table of Equalized Valuations.

In determining the applicability of non-usable Category No. 24, it is necessary to determine the date that the zoning change or variance became effective. If the change occurs prior to the assessing date, there is an opportunity to reflect the change in the assessment, and non-usable Category No. 24 does not apply. If, however, a change occurs after the assessing date, there is no opportunity to reflect the change in the present assessment, and Category No. 24 is applicable.

It must be remembered that there is a definite distinction between a zoning change and a "change of use". An example of the latter would be where commercially zoned property being used for residential purposes is purchased for commercial use. As the property is already zoned for commercial use, there is no necessity for a zoning change. This example indicates what may be referred to as a "change of use" but does not constitute a zoning change within the meaning of non-usable Category No. 24.

25. Transactions in which the full consideration as defined in the “Realty Transfer Act” is less than \$100.00;

The full consideration referred to is the Sales Price, not the Realty Transfer Fee.

As a matter of practice, it is better to be as specific as possible in the choice of non-usable categories. Many sales that could fall into this category are more accurately coded with another non-usable category.

26. Sales which for some reason other than specified in the enumerated categories are not deemed to be a transaction between a willing buyer, not compelled to buy, and a willing seller, not compelled to sell;

If the transaction was not between a “willing buyer” and a “willing seller,” then this category may be used.

If there is a NU category that more accurately describes the conveyance, then that NU code should be used instead.

If the sale does not reflect market value, a thorough investigation should be conducted to determine if anything significantly affected the sales price.

- *A description of the reason why this sale qualifies under this category must be provided with the SR1A. Assessor remarks such as "other" or "not market value" will not be accepted.*

REFERENCES:

LPT News. General Use

April

1960:4

Pennsville Township v Director, Division of Taxation 16 NJ Tax
(1996 Superior Court Appellate Division)

1996 - Parties to the sale were not knowledgeable as to facts about the property including property's market value. Circumstances of the sale were not likely to lead to purchase price reflective of fair market value of property.

Weymouth Township v Atlantic County Board of Taxation – Oral Decision rendered by Judge Rimm on August 6, 1987

1987 – Assemblage is the combining of two or more contiguous parcels into one ownership of, or use. The cost of acquiring an adjacent parcel of real estate into a single ownership is beyond the estimated cost of similar sites not contiguous and not forming the specifically desired assemblage.

Township of Mt Laurel Burlington County v Director, Division of Taxation
Division of Tax Appeals Docket No 6 – 73-74

1973 – Purchase by a buyer to clear the title to the driveway leading to his garage was not a purchase by a “willing buyer” and it falls within category #26.

Niktan Realty Co. v City of Passaic 1 NJ Tax 393

1980 – The indispensable component of any sale in economic terms is a shift in the risks and benefits of ownership...The buyer put up no cash and thus assumed no economic risk.

State of New Jersey
LOCAL PROPERTY TAX BUREAU NEWS

Division of Taxation



Department of the Treasury

314 EAST STATE STREET, TRENTON, NEW JERSEY

April 1960

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"LOCAL PROPERTY TAX NEWS"

Page Four

NON-USABLE CATEGORY LIST A GUIDE TO UNIFORMITY

In using sales data to determine assessment ratios, it is essential that the sales meet the requirements of the willing buyer-willing seller concept. The weeding out of those transactions involving sales other than willing buyer-willing seller has to be done through the application of uniform policies and procedures. The twenty-seven (27) categories of "Non-Usable Deed Transactions"* are included on the list (revised 7-1-58) in order to attain the uniformity necessary to eliminate those sales which are unsuitable for ratio use.

Recently there has been a tendency on the part of some toward an indiscriminate use of several of those non-usable categories without a sufficient explanation.

Category No. 25 (Transactions in which only 55c in revenue stamps are affixed to the conveyance unless the actual consideration has been determined), calls for the elimination of a transaction only where the actual consideration cannot be determined. When the assessor receives an SR1-A from the county board of taxation and the stamps affixed to the deed are shown to be 55c, it is still necessary that Section 2 of the SR1-A be completed. A sale of this nature is not to be ruled out simply by inserting the notation "category No. 25" on the face of the SR1-A.

Category No. 26 (Sales which for some reason other than specified in the enumerated categories are not deemed to be a transaction between a willing buyer and a willing seller), may be used only when there are other conditions surrounding a sale which would tend to make it unsuitable for ratio use and where the provisions of one or more of the other non-usable categories are not applicable. The insertion of "NU No. 26" without explanation is not sufficient reason to eliminate the sale as unsuitable for ratio use.

When the provisions of categories No. 7 (Sales of property substantially improved subsequent to assessment and prior to the sale thereof) or No. 24 (Sales of property, the value of which has been materially influenced by zoning changes where the latter are not reflected in current assessments), are used as a reason to eliminate sales from the ratio study, they should be accompanied with explanations sufficient in scope to clearly indicate the fact as to why it is deemed non-usable.

The purpose of the "Non-Usable Deed Transactions" list is to screen out sales that are not usable for determining assessment ratios. Uniform application and treatment of these categories ensure that only bona fide sales are used as data in the sales-assessment ratio study.

*27 categories
were revised to 33
categories in 2005

27. Sales occurring within the sampling period but prior to a change in assessment practice resulting from the completion of a recognized revaluation or reassessment program, i.e. sales recorded during the period July 1 to December 31 next preceding the tax year in which the result of such revaluation or reassessment program is placed on the tax roll;

The NU27 category is for State use only. A computer program is used to identify the sales which are excluded for this category. The Assessor may not use this category.

Sales that are prior to the revaluation/reassessment are at a different assessment level than sales that are after the revaluation/reassessment. Including sales at different assessment levels will distort the Director's Ratio and are excluded from the study.

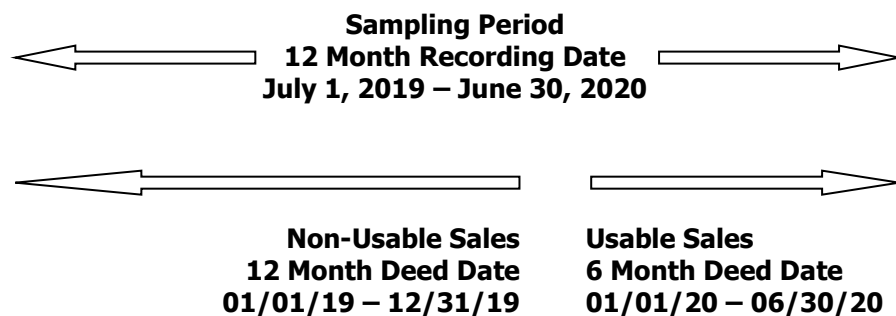
If the municipality is conducting a revaluation/reassessment, the municipality should process the SR1A as they would normally. The state will designate the sale as non-usable once the revaluation/reassessment is completed and certified.

Sales of property where the assessment has been changed through an approved compliance plan are not excluded from the sales ratio study using this category.

Two dates are involved in determining if the sale is usable:

- 1) The recording date must occur in the current sampling period, July 1st – June 30th
- 2) The deed date must have occurred in the last six months of the sampling period, January 1st – June 30th

Revaluation / Reassessment Implemented for Tax Year 2020



REFERENCES:

LPT News. SR1A Accuracy

March-April 1988:2

State of New Jersey
LOCAL PROPERTY BRANCH NEWS

Department of the Treasury



Division of Taxation

Vol. XXXVI, No.2

Mar.-Apr. 1988

50 Barrack Street, Trenton, N.J. 08646

SR-1A ACCURACY REMINDER

Municipal tax assessors are reminded that there are special problems which result when the SR-1A form is inaccurately completed.

Four subjects merit particular attention at this time:

1. The assessment year must be the same year as that in the deed date. Not only must they be identical, but the certified assessed value for the year in question must be provided on the SR-1A.

2. Information which appears on the SR-1A must be the same as shown on the Certified Tax List. This especially includes the assessed value, which should reflect the status of the property as of October 1 of the pre-tax year, not the status of a subsequent subdivision, improvement, or related change. The block and lot designations entered on the SR-1A must also be those as shown on the Certified Tax List for the year of the sale. These designations must include any suffixes the block and lot may contain.

3. The sale price for any transaction should not be entered on more than one SR-1A, as multiple entries of this figure will render inaccurate totals for Sales Ratio summary reports. A re-recorded deed for example, should not result in two sales prices. Although sales in this category are non-usable, the Local Property Branch must still maintain accurate sales totals for research and statistical analysis.

4. Lastly, all sales in districts planning to implement revaluations or reassessments will be processed as normal sales until studies by the Statistical Section of the Branch reveal that the criteria for either a reassessment or a revaluation have been met. At that time, an in-house computer program will be activated so as to automatically render a usable sale as a non-usable category 27. SR-6's should not be filed for these sales.

28. Sales of properties which are subject to a leaseback arrangement;

In a leaseback, the Grantor keeps possession of the property by making arrangements with the Grantee prior to the sale.

In order for this category to be applicable, the grantor must retain use of the property for a significant duration and the leaseback must have substantially impacted the sales price.

- *Assessors should provide information as to why the SR1A qualifies under this NU category.*

29. Sales of properties subsequent to the year of appeal where the assessed value is set by court order, consent judgment, or application of the “Freeze Act;”

When a transfer of a property occurs after an assessment appeal judgment and prior to a revaluation / reassessment or added assessment, then the sale is non-usable.

An assessment represents the Assessor’s opinion of value. Any assessment subject to judgment by any other party is no longer representative of the Assessor’s unfettered determination of value.

Sales of property in the year of the judgment are not excludable under this category.

Sales pursuant to a consent judgment do not qualify under this category.

- Assessors should indicate in the comments section of the SR1A the date of the judgment and the docket number.

REFERENCES:

State Tax News

Volume 23, Number 2 Summer 1994

Consent Judgment – Letter from DAG Leon Wilson to Robert Johnston August 22, 1966

Memo to Robert Johnston from Albert Rees – Legal Analyst Reprint November 2005

Berklely Heights v Division of Tax Appeals 68 NJ 364 and Clifton and Patterson v Passaic Board of Taxation. 85 N.J. (referenced in the memos reprinted November 2005)

Northvale Borough v Director, Division of Taxation. 17 NJ Tax 204

1998- Sales of properties whose assessments on the sale date have been set under the freeze act are not usable in calculating the ratio of assessed to true value.

New Jersey State Tax news



LOCAL PROPERTY TAX

Sales Ratio Policy Unchanged

"Guidelines" established by the Local Property Branch on March 27, 1981 to implement the "Categories of Non-Usable Deed Transactions" under N.J.A.C. 18:12-1.1 for purposes of the Sales Ratio Program were recently reviewed to ensure greater uniformity in treatment by Property Administration field staff; thereby increasing the accuracy of the Table of Equalized Valuations promulgated by the Director of the Division of Taxation. Sales ratio data comparing real estate sales prices to assessment values form the basis of the Equalized Valuation Table used in the calculation and apportionment of State School Aid.

Over the years, policies have been developed for 27 categories of non-usable deed transactions which may be excluded from the Table. As part of the recent review, the Division's position on property transfers which have been the subject of tax appeals, Non-Usable Category 26, was re-evaluated and confirmed.

In an Attorney General's opinion dated August 22, 1966, Leon S. Wilson stated, in part: "An assessment subjected to arbitration, discussion or judgment by any party other than the assessor must to some degree render

the assessment not the product of the assessor's unfettered determination." Attorney General Wilson recommended that the result of the consent judgment be disregarded as not representative of the valuation of the assessor.

Sales of real property for which the assessments were revised by consent judgment within the year sold are considered "usable" for sales ratio purposes, provided there are no other non-usable factors affecting value. The ratio of these sales is computed on the municipal tax assessor's original assessment as per the Tax List of January 1. It must be noted, however, that sales in the year of consent judgment may be non-usable if there are revaluation/reassessment omissions, mistakes in measurements as reflected on the property record card, or wrongful property classifications, e.g., a Class 2 three-family parcel placed the Class 4 commercial category. Where a tax appeal has been filed within the two years prior to sale, the transaction is non-usable.

There is no basis for a policy change by the Division of Taxation at this time.

Freeze Act

In accordance with N.J.S.A. 54:3-26, judgments have a binding effect known as the Freeze Act. If no further appeal is made from the judgment of a county board of taxation, the assessed value must remain in effect for the assessment year and two subsequent years, unless otherwise stipulated by the parties themselves. The Supreme Court of New Jersey has held that the Freeze Act is triggered not only by adjudicated judgments but by judgments based on settlements as well. The distinction between judgments resulting from adversary presentation and those of mutual agreement of the parties was decided to be legally unsound. Thus, property sales occurring in the two years subsequent to consent judgments are non-usable. Likewise, if an assessment has been adjusted in the two years prior to the year of sale and the Freeze Act is in effect, the sale is also non-usable.

Consent Judgment Letter from DAG Leon Wilson to Robert Johnston August 22, 1966



State of New Jersey

**DEPARTMENT OF LAW AND PUBLIC
SAFETY**

**DIVISION OF LAW
STATE HOUSE ANNEX
TRENTON, NJ 08625**

ARTHUR J. SILLS
Attorney General

ALAN B. HANDLER
First Assistant Attorney General

August 22, 1966

Mr. Robert Johnston
Chief, Sales Ratio Section
Local Property Tax Bureau
314 East State Street
Trenton, New Jersey

RE Consent Judgments - - Sales Ratio Study

Dear Mr. Johnston:

You request comment as to the usability for purposes of the State Sales Ratio Study of real property sales, the assessment of which has been revised in the sale year. You limit your request to those situations wherein revision results from so-called "consent judgments" (known also as "assessor appeals") issued by the county board of taxation on the representation of a municipal assessor or by the Division of Tax appeals upon settlement of a thitherto disputed assessed evaluation. Difficulty arises from the fact that whereas the assessor's list of January 1st affixes a given assessed value to a parcel that assessment is subsequently revised (presumable reduced) following discussion between the assessor and the property owner. This revision is submitted to a county tax board which substitutes by means of a formal judgment the new evaluation as the correct assessment. Thereafter, but within the same tax year, the parcel is sold. The tax roll available to the Local Property Tax Bureau carries the initial assessed valuation of the assessor; the SR1A filed by the assessor carries the reduced assessment (or if not, then a subsequent SR6 form seeks reduction of the assessed valuation). You ask, "Should such real estate transaction be used in the Sales Ratio Study?"

ALTERNATIVES:

Such sale must be declared either nonusable or usable; and if the latter, its computation must employ either the initial assessed valuation ("assessment") or the judgment of value ("revision").

The sale is subject to a claim of nonusability on the basis of category 26 which provides for exclusion of sales “which for some reason other than specified in the enumerated categories are not deemed to be a transaction between a willing buyer and a willing seller.” This category has been interpreted with sufficient latitude to allow exclusion of nonrepresentative sales. A sale such as you describe is, in certain respects, nonrepresentative. Whereas the presumption supporting the study is conclusive that the assessor freely exercised his judgment as to property value, an assessment subjected to arbitration, discussion or judgment by any party other than the assessor must to some degree render the assessment not the product of the assessor’s unfettered determination. As such, such sale may be said to reflect something other than a standard assessment practice and thus be inconclusive with regard to the objectives of the Sales Ratio Study.

On the other hand, to declare such sale nonusable must to a large degree exclude from the study a great number of otherwise legitimate sales having substantial effect upon the study. Apparently, it is within the discretion of the assessor to proceed to consensual revision of his assessment in time for revision of the study. Thus, to exclude peremptorily such sales would permit the assessor to evaluate the effect of sales generally, select those disadvantageous to his ratio and propose reduction of even slight degree to render the sales nonusable. Furthermore, in view of the apparent apathy, ignorance or fear with which most taxpayers view a contest of their own assessments striking from the table consent judgment sales leaves a presumably equal or greater number of erroneous assessments not challenged by the property owner. Such procedure inevitably introduces error.

Should the sales be used, the assessed valuation must be selected from between the two available. The initial assessment, whether it be the result of erroneous judgment (and so long as it be not mechanical error) is a valid indication of the assessor’s practice with regard to the parcel in question and like properties as well. Furthermore, it is presumed that the error in judgment regarding the contested assessment has been applied throughout the assessor’s tax list; that while judgment errors may produce invalid assessment as to single properties which ought to be changed, in the aggregate, the error of one will cancel that of another. Thus in the interests of statistical validity the initial assessment would appear to be the most desirable.

It has nevertheless been contended that the consent judgment evaluation is in fact the more representative assessment. It has been noted assessors aware of impending sales (particularly involving valuable commercial properties) may adopt, as a practice, an excessive assessment to increase their general ratio. Such practice would be engaged in, according to this line of thought, with the specific intention to revise subsequently the assessment by means of an assessor’s appeal. In this manner the assessor is pleased (for his ratio is high) and the taxpayer is pleased (for his assessment is reduced as are his taxes). To obviate this pressure for initial over assessment, it is suggested by some that the consent judgment be used for it is, in fact, that assessment which would have been utilized had there been no impending sale. Viewed as an objection to use of the initial assessment, this argument presumes bad faith of municipal assessors. Such presumption, while possible, is nevertheless unacceptable. *Other methods that the artificial revision of assessment are available to enforce legal assessment practices. (illegible)*

It is noted a recent Appellate Division case, Clifton and Paterson v. Passaic Bd. of Taxation, 85 N.J. Super. 437 (App. Div. 1964), has determined a sale such as you describe to be usable and has permitted computation based upon the revised assessment resulting from a consent judgment on the merits. It is suggested this opinion is not mandate for use of the revision but rather a grant of authority to use such consensual assessments. It is permissive in tone and in effect for the court has not presumed to compel either the county board of taxation or the Division of Taxation in the exercise of its administrative discretion in preparing the Sales Ratio Study generally. The holding of

this case should be limited to those facts; it does not lay down a general rule applicable to all cases:

“Under the circumstances of this case, we are satisfied that the county board not only had the authority to compute its ratio based on the adjusted assessed valuation but that, fairness and justice to other municipalities of the county called for the correction of the overassessment for 1961 which had been imposed by the tax assessor.” (emphasis supplied.) 85 N.J. Super. At p. 446.

It is noted that to reach this conclusion, the court was required to distinguish an earlier case dealing with the same subject matter. In Berkeley Heights v. Div. Of Tax Appeals, 68 N.J. Super. 364, (App. Div. 1961) cert. Denied, 36 N.J. 138 (1961), the court had held nonusable an assessment consent judgment offered by the taxing district in substantiation of the ratio it alleged to have assessed certain unsold properties. The consent judgment related to properties consisting of 80% of the class 4 ratables in the taxing district; the sale was of a parcel approximating 5% of that class. It appeared from the assessment of record that the sold parcel was assessed at 12.5% while the municipality contended the assessment of the great majority of the property in that class was at 20%. The court in Berkeley Heights rejected the consent judgment assessment for this purpose and implied that the consent judgment assessment would be nonusable for the purposes of a sales ratio study. The court in Clifton characterized the Berkeley Heights case as follows:

“Berkeley did not hold that a consent judgment may never be used - it merely held that the consent judgment there involved could not be used.” 85 N.J. Super. p. 445.

In the same manner as Judge Colleser distinguished Clifton from Berkeley, the present issues should be distinguished from Clifton.

On other occasions, our courts have spoken of issues arising from the “freeze” statutes. See Hamilton Gardens Inc. v. Hamilton Twp., 45 N.J. Super. 124 (1957); Riverview Gardens v. North Arlington Borough., 9 N.J. 167 (1962). These pronouncements indicate that certain latitude is permitted administrative agencies with regard to the application of the “freeze” statutes. In the same manner, it is submitted latitude is available in this administrative determination of usability of sales such as you describe.

RECOMMENDATION:

It is recommended that sales of properties the assessment of which has been revised within the sale year by consent judgment shall be utilized in the Sales Ratio Study; the ratio of such sale should be computed on the basis of the initial assessment included by the assessor in his tax list of January 1st. The result of the consent judgment should be disregarded.

This recommendation is in apparent conflict with a statutory directive regarding the effect of consent judgments. N.J.S.A. 54:3-26, the Freeze Act, provides that upon revision of an assessment by judgment the assessment of such property shall not be changed for the two succeeding assessment years. It is generally held that sales of properties, the assessment of which is subject to the Freeze Act, are nonusable in either the county or state tables. This practice is founded upon the presumption that the assessed valuation, the product of a judgment or consent, does not represent the appraisal of the assessor. Cf. Berkeley Heights, v Div. Of Tax Appeals, supra; Riverview Gardens v. North Arlington Boro., supra; Hamilton Gardens Inc. v. Hamilton Twp., supra. Despite language indicating possibly the application of the rule of these cases to contested judgments only they are viewed as applying to consent judgments as well in respect of the fact that a distinction between judgments of quasi-judicial tribunals

resulting from adversary presentation and those reflective of mutual agreement of the parties is legally unsound.

Moreover, it is obvious that the initial assessment could not be used where the sale were to take place in a second or third assessment year from that of the revision for the initial assessment would then be two or three years old and would not be reflective of current assessment practices. This apparent inconsistency with the recommendation above may be resolved by applying that recommendation only to the first year sales. Thus where a sale occurs in the same tax year as a consent judgment the sale shall be carried in the Equalization Table on the basis of its initial assessment. Where the sale occurs in a second or third assessment year it should be nonusable as heretofore.

The situation to which these comments are addressed is not limited to consent judgments. Adversary proceedings resulting in compromise or independent judgment of either the county board or the Division of Tax Appeals should be treated in the same manner as are consent judgments or assessors' appeals. Should the parcel be sold in the judgment year, it should be used and the ratio should be computed on the basis of the initial assessment. Sale of such parcel subsequent to the judgment year should not be reflected in the Sales Ratio Study. (See comments in this regard, *supra*.) Instructions in this regard should be prepared for consideration by the Municipal Assessor's Association and the Director's Coordinating Committee.

These comments indicate a legal preference for use of the initial assessment. It must be noted, however, that the determination of usability and the choice of assessment value is strictly within the sole competence of the Local Property Tax Bureau. Whatever decision is made, so long as it's not "capricious, arbitrary or unreasonable," in my opinion, may be successfully defended before the courts of this State. This remains a policy decision which must consider primarily not the difficulties of legal justification but the practicalities of the New Jersey Sales Ratio Study.

I trust this discussion has been of some assistance.

Very truly yours,

Leon S. Wilson
Law Assistant

LSW/lg
cc / Mr. Alan F. Hart

Memo to Robert Johnston from Albert Rees – Legal Analyst Reprint November 2005

**INTRA – DEPARTMENTAL
COMMUNICATION**

**DEPARTMENT OF
THE TREASURY**



TO Robert Johnston

TITLE Principal Field Representative

DIVISION-BUREAU Local Property Tax

Trenton _____

Other Location – Indicate

FROM Albert H. Rees, Jr. AR

TITLE Legal Analyst

DIVISION-BUREAU Local Property Tax

SUBJECT Consent Judgments – Sales Ratio Study

DATE August 26, 1966

Attorney General Letter of Wilson

Dated August 22, 1966

Clifton Case as Wilson says on page 3 of his letter, is not a mandate for use of consent judgment but rather a grant of authority to use such. All law cases are decided on particular facts and courts sometimes strain the law to due equity. Clifton Case on page 443 refers to "chronic over assessment" over a period of years. Clifton Case on page 445 reads as follows:

"The very nature of the formula used in reaching a ratio of assessed to true value would seem to call for an adjustment and correction when specific facts are revealed to a county board, which facts, when given proper effect demonstrate that the share of county tax burden imposed on a municipality, or municipalities, is dramatically or substantially excessive. C.F. Kearny v Division of Tax Appeals, 35 N.J. at page 310". Thus Clifton Case would seem to apply only to extraordinary situations.

To turn to Berkeley Heights Case, this decision did not directly involve a consent judgment. The Bell laboratories were not sold. Thus to use Berkeley Case would not seem of much guidance when there has not been a sale. The Clifton Case beginning at the bottom of page 444 characterizes Berkeley decision as follows:

It is clear that the court (in Berkeley) concluded that the consent judgment could not be used in Berkeley to arrive at a ratio of assessed to true value because there had been no sale of the Bell property. Furthermore, in Berkeley this municipality also attempted to use the Bell consent judgment as evidence in its favor; whereas here (in Clifton) the county board used it against Passaic as an admission that it had over assessed the Botany property. Berkeley did not hold that a consent judgment may not have been used – it merely held that the consent judgment there involved could not be used". Thus to repeat, Berkeley Case does not provide much basis for throwing out a sale on basis of consent judgment, when there is no sale.

Since Clifton and Berkeley together provide less guidance that appears at first glance, we as an administrative body are without complete guidelines. However, a good idea of what the court in Berkeley thought of consent judgments generally is provided by the following language at page 371:

"It is clear that such voluntary assessment agreement does not establish a 'sales price' or 'sales value'. In addition to those facts it must be understood that before the entry of the consent judgment the other municipalities which might be affected by a determination of a ratio based upon that judgment were not given an opportunity to be heard. It is also to be noted that any number of reasons (such as a desire to attract new industry) may have driven the township into agreeing to the entry of such a judgment. At any rate, it is clear that the consent judgment should

be binding only as between the township and Bell, and it is not the type of proceeding which should be utilized to arrive at a ratio of assessed to true value which would ultimately affect the burden of taxation to be borne by the other municipalities in Union County.”

For this reason I would agree with Wilson that second and third year sales after-consent judgment should be declared non-usable as a matter of administrative policy.

To consider the year in which-consent judgment is entered, I must agree with Wilson that the sale should be used as a matter of policy. I quote Wilson as follows:

“It has nevertheless been contended that the consent judgment evaluation is in fact the more representative assessment. It has been noted assessor aware of impending sales (particularly involving valuable commercial properties) may adopt as a practice an excessive assessment to increase their general ratio. Such practice would be engaged in, according to this line of thought, with the specific intention to revise subsequently the assessments by means of the assessor’s appeal. In this manner the assessor is pleased (for his ratio is high) and the taxpayer is pleased (for his assessment is reduced as are his taxes). To obviate this pressure for initial over assessment, it is suggested by some that the consent judgment be used for it is, in fact, that assessment which would have been utilized had there been no impending sale. Viewed as an objection to use of the initial assessment, this argument presumes bad faith of municipal assessors. Such presumption, while possible, is nevertheless unacceptable. Other methods than the artificial revision of assessment are available to enforce legal assessment practices.

Continuing on first year sales, we realize that the Bureau desires uniformity but at the same time needs flexibility to throw out such first year sales in extraordinary circumstances. The Clifton Case would allow us to do this. However, the Bureau is not equipped to examine every sale to determine whether circumstances are extraordinary. Thus in the interest of uniformity of procedure, we suggest for reasons cited by Wilson in previous paragraph, that as a matter of practice, when there are first year sales, that the initial assessment be used. We quote from page 377 of Berkeley Case as follows: “We are in accord with the determination of the Division of Tax Appeals that the application of the sale price to assessment uniformity establishes a fair ratio, and avoids a race among the several districts to conceive of intricate and ingenious plans to obtain individual advantages”.

It is submitted that as an assessor knows that first year sales will be used in the sales ratio and thus knows what to expect from the Bureau, that the assessor will be impelled to make more accurate assessments initially.

AHR/rv
Cc: Mr Hart

30. Sale in which several parcels are conveyed as a package deal with an arbitrary allocation of the sale price for each parcel;

Sales in which several parcels are conveyed between the same parties, through multiple deeds, as a package deal, may result in the sale prices being arbitrarily allocated.

In some instances, the sales may be in multiple districts, as when a business may be selling parcels throughout the State, such as a group of gas stations or banks.

Transfers of multiple parcels in a single deed that is subject to a substantial discount due to a bulk discount or liquidation should be designated as a NU26.

➤ Information regarding the other parcel(s) should be provided on the SR1A.

	Properties	Assessment	Sale Price	Ratio	NU30?
Example 1 Single Deed	Parcel A	\$200,000	\$200,000	100.00%	No
	Parcel B				
Example 2 Multiple Deeds	Parcel A	\$25,000	\$100,000	25.00%	Yes
	Parcel B	\$175,000	\$100,000	175.00%	Yes

Please note that example 1 is a single deed with no allocation issues. The assessments for both parcels are combined and applied to the sales price to create the ratio. In example 2, there are multiple deeds and allocated sales prices. As a result, the ratios become distorted leading to a NU30 designation.

REFERENCES:

East Orange vs Essex County Board of Taxation – Division of Tax Appeals – Calendar of June 5, 1961.

Sales of property which sales prices were arbitrarily determined were found to be non-useable.

City of Atlantic City v Atlantic County Board of Taxation Superior Court of NJ Appellate Division 25 N.J. Tax 280.

The sales properly excluded because they were part of a package deal with an arbitrary allocation of price, they constituted a non-useable assemblage of properties, and plaintiff failed to establish that the sales constituted a transaction between a willing buyer and willing seller, not compelled to buy nor compelled to sell, and knowledgeable of the market values of the properties.

31. First sale after foreclosure by a Federal or State chartered financial institution;

A financial institution is not in the real estate business. When a financial institution takes title through a foreclosure action, the financial institution is compelled to sell the failing asset to cover the balance of the mortgage.

As a result, these transactions are usually not indicative of market value and are not usable sales.

REFERENCES:

Township of Pennsville v. Salem County Board of Taxation – Division of Tax Appeals - Docket No. E.A. 3. Affirmed by Superior Court Appellate Division (A. 210 – 68) 3/3/69
1968 – Property was acquired by the bank through foreclosures. The Bank held the property for two years during which time it was partially rented. The Bank's motivation for selling after holding the property for two years stated by a bank representative "Naturally we are not in the real estate business. We get into situations such as this and you want to move out, and after a reasonable time you come to accept what appears to be a reasonable offer, after our two years of experience or so,"

Whippany Associates v. Township of Hanover¹ N.J. Tax 325

1980 – Sale by bank which took title in lieu of foreclosure was not a reliable indicator of value since bank was under greater economic compulsion to sell than would be the ideal hypothetical "willing seller." A bank is not in the business of renting and managing real estate holdings . . .

32. Sale of a property in which an entire building or taxable structure is omitted from the assessment;

The sale price represents property characteristics that exceed the characteristics used to develop the assessment, so the assessment does not represent the property that was sold.

For this category to be applicable, the omitted structure must be substantial.

- *The assessor should note in the SR1A the type of discrepancy and the increased assessment amount.*

33. Sales of qualified farmland or currently exempt property.

Qualified farmland is assessed according to land productivity and is an exception to the uniformity clause. As a result, qualified farmland assessments do not have any correlation to market value. Sales with qualified farmland will ultimately distort the ratio and should be non-usable.

Sales of exempt property under this heading refer to properties where a portion or the entire property's assessment is exempt under statute.

This category does not replace previously existing categories, but offers another option for sales that do not easily fit into Non-usable Category 15 and Non-usable Category 17.

This is not applicable to sales by 100% totally and permanently disabled veterans who are exempt from paying property taxes. If the property transferred is exempt on the tax list, the assessor must determine what the classification of the property would be if it were not exempt. The sale is then recorded as the appropriate taxable property class with a usability designation and an explanation in the remarks section.

REFERENCES:

County Tax Board Handbook Reporting Assessment Sales Information 602.12

N J Constitution Article VIII Section 1 Paragraph 1(B) – N.J.S.A. 54:4-23.1

Union Township v Director, Division of Taxation 176 NJ Super 239

1979 – Where the parcel is assessed under the Farmland Assessment Act –No comparative relationship exists between the assessment of the parcel and the sales price of the parcel, which would make that sale non-usable for sales ratio purposes.

Cranberry Township v Middlesex County Board of Taxation 6 NJ Tax 501 – 7 NJ Tax 667 (App. Division 1985)

1984 – the property sold partially included property preferentially assessed under the Farmland Assessment Act of 1964 and therefore the comparative relationship between the assessed value and the sales price necessary for sales – ratio purposes was lacking.

- (b) Transfers falling within the foregoing category numbers 1, 3, 9, 10, 15, 17, 26, and 28 (under section (a) above), should generally be excluded but may be used if after full investigation it clearly appears that the transaction was a sale between a willing buyer, not compelled to buy, and a willing seller, not compelled to sell, with all conditions requisite to a fair sale with the buyer and seller acting knowledgeably and for their own self-interests, and that the transaction meets all other requisites of a usable sale.**

The general goal of the Director's Table of Equalized Valuations is to include as many sales as possible into the study to accurately determine the municipality's ratio.

These NU categories are generally non-usable, but may be usable if the investigation reveals that the sales price reflects market value.

REFERENCES:

1530 Owners Corp v Borough of Fort Lee. 135 NJ 394, 640 A.2d 811

1994 Even if a sale appears to fall into one of the non-usable categories a taxpayer must demonstrate that the inclusion of the challenged sale was improper because the sale was not for fair market value.