STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF TAXATION
PROPERTY ADMINISTRATION

New Jersey Administrative Code
Title 18: Chapter 12
SUBCHAPTER 1. CATEGORIES OF NONUSABLE DEED TRANSACTIONS

ADOPTED JANUARY 27, 2011

GUIDELINES
FOR USE OF 33 NONUSABLE CATEGORIES
USED IN DEVELOPMENT OF THE
ASSESSMENT/SALES RATIO DATA BASE
COLLECTED FOR THE
DIRECTOR'S TABLE OF EQUALIZED VALUATIONS

PROPERTY ADMINISTRATION
LOCAL PROPERTY TAX

AUGUST 2011

NEW JERSEY STATUTES ANNOTATED TITLE 18 CHAPTER 12
SUBCHAPTER 1. CATEGORIES OF NONUSABLE DEED TRANSACTIONS:

18:12-1.1 Categories enumerated:

(a) The deed transactions of the following categories are not usable in determining assessment-sales ratios pursuant to N.J.S.A. 54:1-35.1 et seq.:

1. Sales between members of the immediate family;
   LPT News. SR1A form. ..... June-July 1955:1

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

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

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;

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

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

7. Sales of property substantially improved subsequent to the assessment and prior to the sale thereof;
   LPT News. General Use. ..... April 1960:4
   LPT News. Non-Usable Deed Transaction ..... May-June 1964:2
   LPT News. Non-usable deed Transaction ..... Sept-Oct 1973:2
   LPT News. Nonusable deed Transaction ..... May-June 1981:2
   LPT News. Nonusable category 7 (reprint) ..... May-June 1990:2
   LPT News. SR6 Be Thorough ..... July-Aug 1990:3

8. Sales of an undivided interest in real property;

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;

10. Sales by guardians, trustees, executors and administrators;
    LPT News. Non-usable deed transaction ..... July-August 1974:2

11. Judicial sales such as partition sales;

12. Sheriff's sales;

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

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

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;

16. Sales of property assessed in more than one taxing district;
    LPT News. Assessment of Property in Two Taxing Districts .....March 1954:1
    LPT News. Non-usable deed transaction ..... October 1965
    LPT News. Non-usable deed Transaction ..... Jan-Feb 1974

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

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;

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;

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

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

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

23. Sales of commercial or industrial real property which include machinery, fixtures, equipment, inventories, or goodwill when the values of such items are indeterminable;
    LPT News. Non-usable Deed Transaction ..... June-July 1965:2

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;
    LPT News. General Use. ..... April 1960:4
    LPT News. Non-usable Deed Transaction ..... May 1965:2

25. Transactions in which the full consideration as defined in the "Realty Transfer Act" is less than $100.00;
    LPT News. General Use - ..... Revenue Stamps* April 1960:4

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;
    LPT News. General Use ..... April 1960:4

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 1 next preceding the tax year in which the result of such revaluation or reassessment program is placed on the tax roll;
    LPT News. ..... SR1A Accuracy Jan-Feb 1987:2
    LPT News. .....SR1A Accuracy March-April 1988:2
    LPT News. .....Grantor Listings March-April 1989:2

LPT News.....Grantor Listings March-April 1987:2

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

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".
    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

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

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

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

33. Sales of qualified farmland or currently exempt property.
    LPT News. Qualified farmland ..... February 1965:2

(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.

NEW JERSEY STATUTES ANNOTATED TITLE 18 CHAPTER 12
SUBCHAPTER 1. CATEGORIES OF NONUSABLE DEED TRANSACTIONS:

18:12-1.1 Categories enumerated:
(a) The deed transactions of the following categories are not usable in determining assessment-sales ratios pursuant to N.J.S.A. 54:1-35.1 et seq.:

1. **Sales between members of the immediate family;**

Sales between relatives tend to be at prices lower than would otherwise be expected. The relationship between relatives adds a dimension to the transaction that is not included in the parameters of an open market transaction between unrelated parties.

REFERENCES:
LPT News. SR1A form. June-July 1955:1

The assessor may have personal knowledge of family relationships.

N.J.S.A. 46:15-10 The fee imposed by this act shall not apply to a deed:
(j) between a husband and wife or parent and child

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

"Assistance in Assessment Administration"

State of New Jersey

LOCAL PROPERTY TAX BUREAU NEWS

Division of Taxation Department of the Treasury

JUNE-JULY 219 WEST STATE STREET, TRENTON, NEW JERSEY 1955

SALES FACTS FOR ASSESSORS EVERY TRANSFER FURNISHED

Help, at last, for the assessor ... hearsay prices need no longer be used to gauge the value of properties. Weekly or monthly, depending upon the real estate activity in your taxing district, you will receive a sales record for every property transaction.

A new Sales Ratio form (SR-1A), which is designed to provide assessors with information on all sales in their taxing districts, is about to be introduced by the County Boards. The new form, which is a multi-copy carbon system similar to many merchandise sales slips, is serially numbered for easy reference and will provide exact copies for use by the assessor, the county board and the Director of Taxation alike. The new form replaces the present single copy card.

Assessors will now be afforded the opportunity of expressing their opinion as to whether the sale is a bona fide one. He has an intimate knowledge of the properties in his district and is often conversant with the circumstances under which sales are made. The form provides a "Remark" space wherein the assessor can briefly state the reason why a sale should or should not be used in computing ratios. For example, the sale from Doctor Sherwood to James (Jim) Blackwood and wife would be recognized only by the local assessor as a wedding gift sale by the doctor to his daughter and his son-in-law. The price would not be true value so the ratio would not be usable.

The new system will provide the assessor with the facts he has so sorely needed in the past. Other features of the new system include:

1. Orderly flow of information at assessor, county and state levels.
2. Ready identification by serial number of each transaction not deemed usable or requiring corrected figures.
3. Elimination of duplicate reports of same transaction.

Local school and municipal officials are coming to the realization that the assessor plays a definite part in establishing the ratio for his taxing district and these sales data will help him with valuable facts.

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 as part of the consideration (sales price). Usually the phrase is stated as "One dollar – love and affection". Love and affection cannot be measured in dollar and cents and the definition of market value requires the price to be expressed as the "price in terms of cash". Since "love and affection" cannot be converted to "a price in terms of cash", any sale which references this phrase 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 lack exposure on the market. Additionally, there is an established relationship between the buyer and the seller that exceeds the scope of the relationship between a willing seller and a willing buyer expected in a market transaction.
   Many sales of this type are made only to obtain financing or adjust corporate accounts. Sales between affiliated partnerships, partnerships and the individuals who are part of those partnerships and family members of individuals who are part of the partnership lack the normal relationship of a willing seller and a willing buyer.

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;**

   In a transfer of convenience, the sale price is usually a nominal amount. The most common of these transfers relate to a technical change in the character of the title. Many of the transfers are referred to as a "rerecord", where the deed is rerecorded to correct an error in the initially recorded instrument.
   The deed type, or a statement of interest transferred, or the relationship of the buyer and the seller, will identify some of these types of sales.

   REFERENCES:
   N.J.S.A. 46:15-10 The fee imposed by this act shall not apply to a deed:
   (d) which confirms or corrects a deed previously recorded.
   (m) releasing a right of reversion
   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 assessment sales ratio data base is developed from sales recorded during the State fiscal year or from July 1 to June 30 – Sales are nonusable under this category if

a) the recording date is outside the sampling period - or

b) the deed date or contract date preceded the July 1 recording of the sampling period by more that 6 months.

(In other words the deed date is earlier than the January 1 preceding the July 1 recording date of the sampling period. Application of this rule allows for a maximum range for deed dates of 18 months covering two tax years and a maximum range of recoding dates of 12 months covering two tax years.)

Two dates are involved in determining the usability of the 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 must have occurred with the time period which includes the same fiscal year plus the six months immediately preceding the fiscal year.

2006 Fiscal Year

12 Months Recording Date

July 1, 2005 - December 31, 2005 – January 1, 2006 - June 30, 2006

18 months Deed Date

January 1, 2005 - December 31, 2005 – January 1, 2006 - June 30, 2006

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 cut off date in order to finalize the Table.

Sales which often are nonusable include land contracts and installment purchases: Land contracts and other installment purchase arrangements in which title is not transferred until the contract is fulfilled require careful analysis. Deeds in fulfillment of a land contract often reflect market conditions several years in the past, and sales information that predates the sampling period is excluded from the data base of usable sales.

State of New Jersey
LOCAL PROPERTY AND PUBLIC UTILITY BRANCH NEWS

Department of the Treasury

Division of Taxation

Vol. XXVIII NO.5 West State and Willow Streets. Trenton. New Jersey 08646 September-October 1980

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.

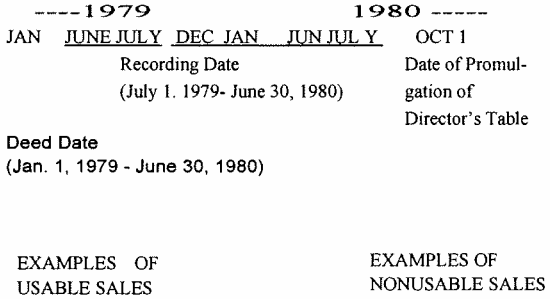
As approved by the Director, Category No.5 reads as follows:

"Transfers deemed not to have taken place within the sampling period. Sampling period is defined as the period from July I 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:



EXAMPLES OF USABLE SALES		EXAMPLES OF NONUSABLE SALES
July 2, 1979	Deed Date	December 311979
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;**

A transfer of this nature lacks the comparable relationship, between the property characteristics assessed and the property characteristics conveyed, to develop a credible ratio between the assessed value of the property set on the assessing date and the sales price of the property when sold.

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.

State of New Jersey

LOCAL PROPERTY TAX BUREAU NEWS

Department of the Treasury

Division of Taxation

VOL. XIII, No.4 314 E. STATE STREET, TRENTON, NEW JERSEY 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;

A transfer of this nature lacks the comparable relationship, between the property characteristics assessed and the property characteristics conveyed, to develop a credible ratio between the assessed value of the property set on the assessing date and the sales price of the property when sold.

Factors to be considered:

Time Interval - The assessing date is October 1 of the pretax year. Only improvements made subsequent to the October 1 assessing date and prior to the sale of the property might qualify for exclusion under this category.

Substantial Improvement – The improvements must be substantial. Replacements of existing items and refurbishing do not qualify under this category.

Added Assessment – Value Change: The reference to Added Assessment significantly limits the use of this category to structural changes which increase the value of the property during the year following the assessment date of October 1, where the law permits the municipality to impose an added assessment/assessment change on a property when the building or other structure has been erected, added to or improved. The dollar amount of the added assessment or assessment change should be included in the comments.

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)

REFERENCES:

LPT News.	General Use.		April	1960:4
LPT News.	Non-Usable Deed Transaction		May-June	1964:2
LPT News.	Non-Usable Deed Transaction		Sept-Oct	1973:2
LPT News.	Non-Usable Deed Transaction		May-June	1981:2
LPT News.	Non-Usable category 7	(reprint)	May-June	1990:2
LPT News.	SR6 Be Thorough		July-Aug	1990:3

N.J.S.A. 46:15-5 If the transfer is real property upon which there is new construction the words "NEW CONSTRUCTION" shall be printed clearly at the top of the first page of the deed and an affidavit by the grantor stating that the transfer is of property upon which there is new construction shall be appended to the deed.
Recognition of new construction in the Realty Transfer Fee Law.

State of New Jersey
LOCAL PROPERTY TAX BUREAU NEWS

Division of Taxation Department of the Treasury

VOL. VIII, No. 4 314 EAST STATE STEET, TRENTON, NEW JERSEY APRIL, 1960

NON-USABLE CATEGORY LIST A GUIDE TO UNIFORMITY

In using sales date 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.

*27 categories were revised to 33 categories in 2005

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.

Department of the Treasury

Division of Taxation

VOL. XII No.5 314 E. STATE ST., TRENTON, NEW JERSEY May · JUNE, 1964

NON-USABLE DEED TRANSACTIONS - CATEGORY NO .7

Category No.7 of the list of Categories of Non-Usable Deed Transactions provides that "Sales of property substantially improved subsequent to assessment and prior to the sale thereof are not usable in determining assessment sales ratios for use in the State School Aid Equalization Table.

Misunderstanding concerning the application of this category exists in some areas and clarification of the questions involved appears to be in order.

In determining whether a transaction is to be considered non-usable under Category No.7, careful attention must be paid to the following two factors:

(1) The Time Interval involved.

(2) Correct interpretation of the term "substantially improved."

Time Interval

In order to be considered non-usable under Category No.7, the improvement of the property 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 between October 1 of the pre-tax year and the actual date of sale of the property.

Thus, the sale of a property in May of the tax year 1964, which had a garage added to it during August. 1963, does not meet the provisions of Category No. 7 since the improvement took place before October 1, 1963, at which time the assessor could and/or 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, since 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 have reference to normal dressing-up maintenance and repair.

Assessors can help to insure that sales which they believe to be non-usable under Category No. 7 are properly verified by setting forth the following information on the SR1:A: the nature of the improvement, the approximate cost, the time the improvement was made and the source of the information.

State of New Jersey

LOCAL PROPERTY AND PUBLIC UTILITY BRANCH NEWS

Department of the Treasury

Division of Taxation

Vol. XXI No. 4

West State and Willow Streets, Trenton, New Jersey 08625

September-October 1973

SALES RATIO STUDY RE: NON-USABLE DEED TRANSACTIONS CATEGORY NO. 7

Category No. 7 of the list of Categories of Non-Usable Deed Transactions provides that "Sales of property substantially improved subsequent to assessment and prior to the sale thereof are not usable in determining assessment-sales ratios for use in the Table of Equalized Valuations.

Misunderstanding concerning the application of this category exists in some areas and clarification of the questions involved appears to be in order.

In determining whether a transaction is to be considered non-usable under Category No.7, careful attention must be paid to the following two factors:

(1) The Time Interval involved.

(2) Correct interpretation of the term "substantially improved."

Time Interval

In order to be considered non-usable under Category No.7. the improvement of the property 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 between October 1 of the pre-tax year and the actual date of sale of the property.

Thus the sale of a property in May of the tax year 1973. which had a garage added to it during August. 1972 does not meet the provisions of Category No.7 since the improvement took place before October 1, 1972, at which time the 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 since 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 have reference to normal dressing-up maintenance and repair.

Assessors can help to insure that sales which they believe to be non-usable under Category No. 7 are properly verified by setting forth the following information on the SR-1A: the nature of the improvement, the approximate cost, the time the improvement was made and the source of the information.

If this necessary information is not supplied: a request for non-usability under Category No. 7 will not be considered.

State of New Jersey
LOCAL PROPERTY AND PUBLIC UTILITY BRANCH NEWS

Department of the Treasury Division of Taxation

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NON-USABLE CATEGORY NO.7

Despite two previous Newsletter articles (May-June, 1964 and Sept.-Oct.. 1973), misunderstanding appears to still exist with regard to Category No.7 of the list of Non-usable Deed Transactions, "Sales of property substantially improved subsequent to assessment and prior to the sale thereof."

Two points are stressed in the articles:

(I) The time interval: The improvement must have taken place after the statutory assessment date and the actual date of sale of the property.

(2) Substantial improvement: Substantially improved means that there were important improvements having considerable value made to the property. Substantial improvement does not have reference to normal dressing-up maintenance and repair.

Assessors are urged to re-read in full the original articles referred to in the first paragraph of this article.

State of New Jersey
LOCAL PROPERTY BRANCH NEWS

Department of the Treasury

Division of Taxation

Vol. XXXVIII, No.3

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

Department of the Treasury

Division of Taxation

Vol. XXXVIII, No.4 50 Barrack Street, Trenton, N.J. 08646 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;

Transactions involving partial interests in real estate present several complications in the determination of the full consideration. If an assumption is made that the value of the whole is in proportion to the fractional interest, an assumed consideration could be calculated for the whole. However, a complete investigation would have to be done before any such assumption could be made. Rather than investigate and/or accept the assumption as fact - sales of this nature are excluded from the database of usable sales developed for the calculation of the Director's Table.

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;

Sales of property where there are open tax sale certificates for more than one year's taxes against the property being transferred are nonusable for sales ratio purposes.

Tax sales and foreclosure procedures include the following procedures. It is no longer possible to foreclose a tax sale certificate on a property without going through the courts. Statutory authority, N.J.S.A. 54:5-77 to 82, which had allowed for non-judicial foreclosures since 1918, was deleted from the statutes in 1994. N.J.S.A. 54:5-80, 81, and 82 protect the due process rights of all concerned.

Tax sale certificates are recorded as liens against the property. The holder of the tax sale certificate must obtain a judgment granting title. The judgment is then recorded as a deed to transfer the title. These types of transfers of title when the action is the conclusion of a tax sale certificate are nonusable for assessment-sales ratio purposes under category 11.

REFERENCES:
N.J.S.A. 46:15-10. The fee imposed by this act shall not apply to deed:
(e) on sale for delinquent taxes or assessments.

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 trustee under powers granted in a will or trust agreement generally does not represent an arms length transaction. Sales from an estate may be made to satisfy the debts of the deceased or the wishes of an heir.

Sales of property where title is held for an individual(s) as a "living trust" – where the individuals benefiting from the trust are participating in the sale are generally usable and should not be excluded under this category as there is no compulsion or duress on the parties for the dissolution of a living trust.

REFERENCES:

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

N.J.S.A. 46:15-10. The Fee imposed by this act shall not apply to a deed:

(o) by an executor or administrator of a decedent to a devisee or heir to effect distribution of the decedent's estate in accordance with the provisions of the decedents will or the intestate law of this state;

In some instances evidence of transfer of title by an executor may be stated in the Affidavit of Consideration for Realty Transfer Fee

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
LOCAL PROPERTY AND PUBLIC UTILITY BRANCH NEWS

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July-August 1974

West State and Willow Streets. Trenton. New Jersey 08625

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 is characterized by compulsion. The motivation of seller skews the transaction and does not represent the motivation of a typical seller. The lack of balance between the motivation of the buyer and seller within the accepted definition of an arms-length transaction make these types of transactions nonusable for the assessment-sales ratio.

References:
N.J.S.A. 46:15-10. The fee imposed by this act shall not apply to a deed:

(f) on partition
(l) in specific performance of a final judgment;
(p) recorded within 90 days following the entry of a divorce decree which dissolve the marriage between the grantor and the grantee.

In some instances sales of this nature may be identified using the Affidavit of Consideration for Realty Transfer Fee:

12. Sheriff's sales;

Sheriff's sales are tainted with the same compulsion as judicial sales. 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. These transactions do not meet the parameters of an arms-length transaction.

REFERENCES:
N.J.S.A. 44:15 – 6.1 Sheriff's deed; statement of prior mortgages, liens or encumbrances;
Realty transfer fee shall be computed upon the amount bid for the property plus the remaining amount of any superior mortgages, liens or encumbrances constituting "consideration" as defined . . .

There is a special Affidavit of Consideration for "Sheriff's Sales" which allows Sales of this nature to be identified from the Affidavit of Consideration for
Realty Transfer Fee. The RTF is computed in accordance with the statutory provisions

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 or liquidation, the sales price is determined by someone or something other than market factors and the accepted economic principals (i.e. supply and demand) that are included in the definition of a market transaction when generally applied to the transfer of real property. Sales for the benefit of creditors indicate a compulsion, a forced sale, on the part of the seller. Any sale that is forced does not fit the definition of an arms-length transaction.

REFERENCES:
N.J.S.A. 46:15-10. The fee imposed by this act shall not apply to a deed:
(g) by receiver, trustee in bankruptcy or liquidation or assignee for the benefit of creditors

Sales of property in receivership, bankruptcy and liquidation may sometimes be identified from the Affidavit of Consideration for Realty Transfer Fee

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.

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. These sales may be identified using a delineation of title and the tax assessment ownership records.

Usually "Sales of doubtful title" tend to be below market value. When a sale is made on other than a warranty deed, there may a question of whether the title is merchantable.

A quitclaim deed is one which purports to convey, and is understood to convey, nothing more than the interest or estate in the property described of which the grantor is seized or possessed, if any at the time, rather than the property itself. A quitclaim deed is a substantive mode of conveyance. It is an acquitting or giving up of one's claim of title.

Whether or not an instrument constitutes a quitclaim deed depends on the intent of the parties to it as gathered from the language of the instrument itself, and the attending circumstances such as the adequacy of the price given, and the intent is not to be determined by the mere omission or presence of a covenant of warranty.

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 unit or governmental agency usually involves an element of compulsion. Also, sales by government of surplus property or redevelopment sites may tend to be at very favorable prices less than market value. Both the assessed value and the sales price of governmentally owned properties that are sold need to be examined very closely.
Inasmuch as governmental agencies do not pay taxes – one of the issues examined for the transfer of real property is largely ignored by the parties involved in the transfer.

REFERENCES:
Realty Transfer Fee:
N.J.S.A. 46:15-10. The fee imposed by this act shall not apply to a deed:

(b) by or to the United States of America or any instrumentality, agency, or subdivision thereof;

In most cases, governmental agencies do not pay realty transfer fee tax on transfers of real property.

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

The Director's Table measures the true value of each taxing district. The purpose of the Table and the procedures used to develop the Table do not allow for the analysis and creation of a ratio where there is no correlation between the characteristics of the property as assessed and the sales price of the real estate conveyed.

Sale of property located in more than one taxing district creates a problem when measuring the relationship between the assessed value and sales price. There is no comparative relationship between the assessed value of the property as assessed in one taxing district and the sales price for the combined properties located in more than one district, any ratio created would be distorted.

Statutes explain the procedures that can be implemented if municipalities wish to relinquish the authority to assess this type of property to one taxing district.
Statutes controlling property that is located in two districts;
N.J.S.A. 54:4-25 and N.J.S.A. 40A: 13-19,20
Shifting of municipal boundary
N.J.S.A. 40A: 7-12, 13, 14

REFERENCES:

LPT News.	Assessment of Property in Two Taxing Districts	March 1954:1
LPT News.	Non-Usable deed transaction	October 1965:2
LPT News.	Non-Usable deed Transaction	Jan-Feb 1974

State of New Jersey
LOCAL PROPERTY TAX BUREAU NEWS

Division of Taxation Department of the Treasury

MARCH 219 WEST STATE STREET, TRENTON, NEW JERSEY 1954

ASSESSMENT OF PROPERTY IN TWO TAXING DISTRICTS

A number of inquiries have been received relative to the proper disposition to be made of the assessment of property partially located in two or more taxing districts or where the boundary line is not precisely known. Various existing conditions which have come to our attention present some complex and interesting situations. With the belief that almost every assessor is confronted with this problem, we are quoting in part one of our letters sent in reply to questions asked in connection with buildings and property in two municipalities and also where the boundary line is not definitely set or known.

"R. S. 54:4-25 provides that where the line between taxing districts divides a tract of land, each part shall be assessed in the taxing district where located unless the governing body of one of the taxing districts shall request by resolution that the entire tract be assessed by the adjoining taxing district in which a portion of the tract IS located. In addition, R. S. 40:43~72 provides that where the boundary line so divides a building the municipalities in which the building or buildings are located may determine, by resolution passed by their respective governing bodies, which municipality shall have sole-supervision of such building or buildings."

"From the language employed in R. S. 40:43-72, mentioned above, it would appear that where there are several buildings involved, the disposition of each might be handled in one resolution. However, as a practical matter, each item may be submitted separately so that those unacceptable may not interfere with the ones which meet with the approval of the governing body consultation with the governing bodies, and municipal attorneys, in advance, might avoid disagreement at the time of formal action on the resolutions. In any event, the proposed disposition of the items presented should be the product of all assessors involved."

"Where the exact line of division is unknown so that agreement is unlikely, resort to R. S. 40:43-67 may be made. This provides for the governing body of either municipality upon fourteen days notice in writing, served upon the mayor or other chief executive officer and upon the clerk of the adjoining municipality, to make' application to the county court for the appointment of commissioners to fix, determine and monument the line between the municipalities. Expenses and charges shall be shared equally by the districts involved."

The procedure for shifting a boundary line which has the affect of annexation, R. S. 40:43-26, is instituted by the petition in writing of 60% of the legal voters residing on the land· to be annexed to a new taxing district. Said petition is directed to the municipality to which annexation is. sought, and shall specifically set forth the boundaries thereto; contain a verification by one of the petitioners and the oath of the assessor, or other person having access to the assessor's books, setting forth the assessed value of real estate within the boundaries; and shall also have attached thereto a certified copy of the resolution of the municipality in which said land is located, consenting to said annexation. The land described in the petition may then be annexed by ordinance passed by a two-third vote of the municipality to which the land is to be annexed."

"It would be beneficial in addition to compliance with R. S. 40:43-27 and 28 to advise the county board of taxation and the Department of Conservation and Economic Development of any adjustment made under the above statutes."

"Should the information and statutory references supplied herein leave any phase of the problem unanswered to your satisfaction, feel free to bring it to our attention."

LPT News. Non-usable deed transaction October 1965:

State of New Jersey

LOCAL PROPERTY TAX BUREAU NEWS

Department of the Treasury

Division of Taxation

Vol. XIII, No. 8 314 E. State Street, Trenton, N. J. October, 1965

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.

LPT News. Non-usable deed Transaction Jan-Feb 1974

State of New Jersey
LOCAL PROPERTY AND PUBLIC UTILITY BRANCH NEWS

Department of the Treasury

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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

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

A sale to a non-profit organization under the categories: church, charitable, and educational, (particularly those exempted under N.J.S.A. 54:4-3.6), may involve an element of philanthropy on the part of a seller, and a sale from any such organization may involve a nominal consideration or restrictive covenants. Although property that is exempt from taxation is to be valued at the same standard of value as property that is taxable, if no taxes are being paid the owners may not review closely the assessed value of the property. Both the assessed value and the sales price of property transferred to and from exempt entities should be examined closely.

Sale of property in this category, where the seller is the non-profit entity is generally nonusable when the property is already reported on the Exempt Property List. Transfers where the grantor is a non-profit entity cannot automatically be classified as non-usable. Should the property transferred be owned by the non-profit entity, but not used for a stated church charitable, or educational purpose, a thorough investigation must be conducted to determine the circumstances surrounding the sale before a determination of usable or nonusable can be made.

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 such a transfer is made in lieu of foreclosure or in fulfillment of a judgment and the sales price may be equal to the loan balance (lien amount), 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 market value or of a willing seller – willing buyer.

These sales are identified by an examination of the deed and the Affidavit of Consideration. Following the delineation of title and indexing the mortgages through the delineation of title will provide a listing of the financial institutions that hold interest in the property.

REFERENCES:
Realty Transfer Fee -
N.J.S.A. 46:15-10. The fee imposed by this act shall not apply to a deed:

(c) Solely in order to provide or release security for a debt or obligation.

Additionally, realty transfer fee is not imposed on sales of this nature

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 must have occurred since the assessment date and the damaged condition is not reflected in the assessed value.
When a sale is excluded under this category, the nature of the damage or contamination should be noted as well as the date of the event.
In the case of claimed contamination – documentation may be obtained from Department of Environmental Protection lists of contaminated sites and remediation site plans.
*When a property is assessed as improved and sold as vacant land and the demolition occurred before the sale there would no longer be a comparative relationship between the assessed value of the property and the sales price of the property. This sale would be non-usable for sales ratio purposes. *When the demolition occurs after the sale, the sale is usable unless another category is applicable.*

**RESIDENTIAL IMPROVEMENT DEMOLITION, SUBSEQUENT TO THE SALE, DOES NOT MAKE A SALE NON-USABLE FOR THE SALES RATIO STUDY UNDER THIS CATEGORY*

Class 2 (residential) property sales transactions occasionally occur where it is the intent of the grantee to demolish the pre-existing improvement. The action of demolition that occurs following sale does not make the transaction non-usable. In order for a sales transaction to be regarded as non-usable in the sales ratio study, the characteristics of the property assessed must not correlate with the property characteristics of the property as sold.

REFERENCES:
Westampton Township v Director, Division of Taxation Docket 011595-93
transcript Oral Opinion
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? The basis for the assessed value and the basis for the sale prices need to be comparable to be used in determining the average ratio of assessed to true value. The numerator and the denominator of the fraction, which makes up the ratio, would measure a different property and thus the ratio would not be a valid example of assessed value to true value ratio if this were not a fact.

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

Purchases or Right-of-Way acquisitions are defined by a compulsion on the part of the buyer. Once a path is projected and designated by the defining agency there is little or no room for deviation.
The current deed may not fully describe the complete transaction. A "declaration of taking" may date back to the actual condemnation for the purpose of "right of way". Research and investigation may be necessary to obtain the full description and length of time between the determination of the consideration and the current transaction.

Although condemnation hearings are held to establish the fair market value of property taken under eminent domain, such transfers are complicated by other considerations and should generally be excluded from a ratio study.

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 both the assessed value (numerator) and the sales price (denominator).

Council on Affordable Housing restrictions are generally stated in the body of a deed or on the Affidavit of Consideration. 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.

Fundamental to the assessment sales ratio program is the use of market value as the basis for true value for assessments and for the sales price. Therefore in the case of low/moderate income housing, neither the assessed value nor the sales price is representative of the standards for usable sales. The fact that the sale is low/moderate income should be addressed on the SR1-A form with a brief comment.

REFERENCES:
Realty Transfer Fee – Partial Exemption from fee -

> N.J.S.A. 46:15-10.1 (2) definition (h) Low and Moderate Income Housing . . . Residential premises subject to resale controls, pursuant to contractual guarantees.

The Realty Transfer Fee Law recognizes the sale of low/moderate income housing.

Notes on COAH UNITS – Definitions and Restrictions

Municipalities shall require that the initial price of low or moderate-income owner-occupied singe family housing unit be established so that after a down-payment of five percent the monthly principal, interest, homeowner and private mortgage insurance, and property taxes shall be based on the restricted value of low and moderate income units N.J.A.C. 5:93-15.

Low-income housing units shall be reserved for households with a gross household income of no more than 50 percent of the regional median income approved by the Council on Affordable Housing (C.O.A.H.).

Moderate-income housing units shall be reserved for households with a gross household income between 50 and no more than 80 percent of the median income approved by the C.O.A.H.

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

Included as part of the definition of market value is "the price in terms of cash". Items taken in trade can not be readily converted to cash terms to determine sales price in conformity with the definition of 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.

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

Included as part of the definition of market value is "the price in terms of cash". The items over and above the real property included in the sales price can not be readily converted to cash terms to determine sales price of only the real property.

The purpose of the Table and the procedures used to develop the Table do not allow for the analysis and creation of a ratio where there is no correlation between the characteristics of the property as assessed and the sales price of the real estate conveyed. A ratio developed from a sales price that included both real and personal property and an assessment of only real property would create a distorted ratio.

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, trade marks, 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. We conclude that there are many items which no specific value had been apportioned and as such it fell clearly within category 23 of nonusable deed transactions.

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 – Storage trailer on wheels meets criteria of personal property. The sale was a parcel including class 1 (vacant) And Class 4A (commercial) – recorded as Class 4A for sales ratio purposes. The sale included three tracts although the assessment for only two tracts was recorded on the SR1A. In addition to the third tract, the sale included a house trailer supported on columns of cinder blocks and clearly not anchored or attached to the ground. The sale involved "commercial" real property (reported on the SR1-A),"the trailer is equipment" and the value of the property is indeterminable within the meaning of the Director's category #23.
Opinion on Remand
The Division's judgment was appealed by the Township of Willingboro; the Appellate Division reversed – holding that the testimony was "hearsay" and remanded the matter to the Division requiring Cinnaminson call as witnesses the parties to the sale or individuals having personal knowledge of the terms or details thereof.
After hearing testimony it was determined that the trailer met the criteria for determining personal property and the sale must be excluded from the data used in preparing the table.

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

VOL. XIII, No.6

JUNE-JULY, 1965

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;

Within the parameters of the land use law and a municipal master plan, the granting or denial of approvals may change the correlation of the characteristics of the property as assessed and the sales price of the real estate conveyed.

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 nonusable category should be applied.

REFERENCES:

LPT News.	General Use.	April	1960:4
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 nonusable 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

Division of Taxation Department of the Treasury

VOL. VIII. No. 4 314 EAST STATE STREET. TRENTON. NEW JERSEY APRIL, 1960

NON-USABLE CATEGORY LIST A GUIDE TO UNIFORMITY

In using sales date 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.

*27 categories were revised to 33 categories in 2005

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.

State of New Jersey
LOCAL PROPERTY TAX BUREAU NEWS

Department of the Treasury

Division of Taxation

VOL. XIII, No.5 314 E. STATE STREET, TRENTON, NEW JERSEY MAY, 1965

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-usuable 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. If no code is chosen, and the sales price fits the criteria defined, the non-usable category defaults to Non-usable 25.

REFERENCES:

N.J.S.A. 46:15-5 (c) "Consideration" means in the case of any deed, the actual amount of money and the monetary value of any other thing of value constituting the entire compensation paid or to be paid for the transfer of title to the lands, tenements or other realty, including the remaining amount of prior mortgage to which the transfer is subject or which is to be assumed and agreed to be paid by the grantee and any other lien or encumbrance thereon not paid, satisfied or removed in connection with the transfer of title. The amount of liens for real property taxes, water or sewerage charges for the current year, or by way of added assessment or other adjustment, as well as of other like liens or encumbrances thereon not paid, satisfied or removed in connection with the transfer of title. The amount of liens for real property taxes, water or sewerage charges for the current or any subsequent year, or by was of added assessment or other adjustment, as well as of other like liens or encumbrances or a current and continuing nature ordinarily adjusted between the parties according to the period of ownership shall be excluded as an element in determining the consideration, notwithstanding that such amount is to be paid by the grantee.

LPT News. General Use - Revenue Stamps* April 1960:4

Kearny v Division of Tax Appeals35 N.J. 299 173 A.2d 8 (Supreme Court of New Jersey) 1961 – Sales Price as indicated by revenue stamps* on the deed is treated as representing true value.

* revenue stamps were replaced by Realty Transfer Fee

State of New Jersey
LOCAL PROPERTY TAX BUREAU NEWS

Division of Taxation Department of the Treasury

VOL. VIII, No. 4 314 EAST STATE STREET, TRENTON, NEW JERSEY April 1960

NON-USABLE CATEGORY LIST A GUIDE TO UNIFORMITY

In using sales date 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.

*27 categories were revised to 33 categories in 2005

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.

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;

This category has always been the "catch-all" category for any sale that does not fit specifically under any of the categories that are enumerated. The key words in the category are "willing seller" and "willing buyer". Guidance for this category is found using the court cases that define and explain the terms "willing seller and willing buyer." Many of the reasons previously accepted as NU 26 are now coded as specific categories.

REFERENCES:

LPT News. General Use April 1960:4

Pennsville Township v Director, Division of Taxation 16 NJ Tax
(1996 Superior Court Appellate Division)
1996 - Not Open Market Property was sold as part of a private sale, not on the open market – 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 as defined, is the combining of two or more contiguous parcels into one ownership of, or use. cost of acquiring individual adjacent parcel of real estate into a single ownership 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

April 1960

314 EAST STATE STREET, TRENTON, NEW JERSEY

VOL. VIII, No.4

NON-USABLE CATEGORY LIST
A GUIDE TO UNIFORMITY

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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. 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 1 next preceding the tax year in which the result of such revaluation or reassessment program is placed on the tax roll;

The purpose of this category is to allow for calculation of a ratio from a sampling of sales for only the current year of the implementation of a recognized revaluation or reassessment. Revaluation and reassessment regulations are found in N.J.A.C. 18:12A – 1.14 a – h.

Exclusion of sales following the implementation of a revaluation or reassessment: Use of this category is initiated by the Division of Taxation after receiving notification of the implementation of an approved revaluation or reassessment. A computer program is run to identify the sales which are excluded for the reason explained above.

An assessor's office should not use NU 27 unless they seek guidance from the LPT staff. All sales should be processed throughout the sampling period as without regard to the pending implementation of a revaluation or reassessment.

In the first year following the implementation of a compliance plan, sales of property where the assessment has been changed utilizing an approved compliance plan are not excluded from the sales ratio data base using this category.

REFERENCES:

LPT News.	SR1A Accuracy	Jan-Feb	1987:2
LPT News.	SR1A Accuracy	March-April	1987:2
LPT News.	Grantor Listings	March-April	1987:2

Two dates are involved in determining the usability of the sale:

1) The recording date must occur in the current fiscal year from and including July 1st through June 30th.
2) The deed date or contract of sale must have occurred in the last six months of the fiscal year. (January 1 – June 30)

2006 Fiscal Year
Revaluation / Reassessment
Implemented for Tax Year 2006

Sampling Period
12 Months Recording Date
July 1st - December 31st 2005 – January 1st - June 30th 2006

Nonusable Sales
Deeds Dated 2005 that are recorded during the sampling period are nonusable as NU 27

Usable Sales
6 months - 2006
Deed Date: January 1st - June 30th
Recorded January 1st – June 30th

State of New Jersey
LOCAL PROPERTY BRANCH NEWS

Vol. XXXV, No.1 Jan-Feb. 1987

Department of the Treasury **Division of Taxation**

50 Barrack Street, Trenton, N.J. 08646

SR-IA ACCURACY A REQUIREMENT TO SALES RATIO STUDY

It is once again necessary to remind municipal tax assessors of the special problems which involve accurate completion of the SR-1A form. Three areas 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 numerically equal, but the proper assessed value for the year in question must be shown.

2. The assessed value appearing on the SR-lA must be that as shown on the Certified Tax List. It 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. Assessed values must also be added correctly. When multiple lots are involved, care must be taken when copying or adding assessed values to ensure accuracy.

3. 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 nonusable category 27.

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-lA 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-1 A 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-lA, 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.

State of New Jersey
LOCAL PROPERTY BRANCH NEWS

Department of the Treasury

Division of Taxation

50 Barrack Street, Trenton, N.J. 08646

March-April 1989

GRANTOR LISTINGS DISTRIBUTED BY BRANCH

In April, the Assessor Assistance Section of the Local Property Branch distributed Grantor Listings to county boards of taxation and municipal tax assessors throughout New Jersey. The Grantor Listings provide information on all real estate transactions, including property classification, SR-l A serial number, recording date, block and lot designations, name of grantor, and the determination as to the usability or nonusability of the transaction for purposes of the Director's sales ratio study. There are monthly and cumulative Grantor Listings.

It is vital that each assessor peruse all Grantor Listings, both for usable and nonusable sales, on a regular basis. Assessors must make certain that all sales represented on the Listings belong in their particular taxing districts. For this reason, it is imperative that the proper county and municipality codes be enumerated on all SR-lA's. Prompt attention to this matter should eliminate the need for formal appeals to correct such errors.

Assessors are reminded, still again, that the assessment year and deed date in Section Two of the SR-1A must be for: the same year. When completing the SR-1A it is essential that assessed values be derived from the appropriate Tax List. Years must coincide: 4-19-89 deed date - 1989 assessment year, for example.

Lastly, it is not necessary to file an SR-6 to correct sales which should be placed in nonusable category #27 in revalued and reassessed districts. A computer program will be activated to render these sales as nonusable automatically. No further action by the assessor would be required.

Adherence to these directives will assure an accurate Table of Equalized Valuations.

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

One criteria included in the transfer of property where the transfer is considered a market transaction is the transfer of the complete bundle of rights inherent in the ownership of real property. A transfer with a lease-back usually lacks the risk accepted as part of the responsibility of property ownership in that the grantor retains an interest in the property.

LEASEBACK - Not all the property rights are transferred at the time of sale. Grantor retains use of the property by making the arrangements prior to the deeding of the remaining rights to the grantee.

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 occurs of a property occurs within the two years following the judgment, and the assessed value was subject to the freeze act the sale is non-usable.

Assessments represent the assessors' opinion of value. Any assessment subject to arbitration or judgment by any party other than the assessor is to some degree no longer representative of the unfettered determination of value set by the assessor.

Sales of property in the year of the judgment or other judicial action are not excludable under this category.

The date of the judgment or other action, as well as the Docket Number, should be noted on the SR1-A submitted,

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 – Where the freeze act applies and the terms of the judgment are known at the time the assessment list is being prepared, the assessor is required to conform the assessment to the judgment. 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.

State Tax News Volume 23, Number 2 Summer 1994

Volume 23, Number 2
Summer 1994

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 NJ.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 nonnusable 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 Collester 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 its 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
Attorney General Letter of Wilson
Dated August 22, 1966

DATE August 26, 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 attempt~~ing~~ed 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 ~~shares~~ sales ~~afforded~~ after consent judgment should be declared non-usable as a matter of administrative policy.

To consider the year ~~much~~ 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 by 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 as a package deal may result in the sales price being an arbitrary allocation. In some instances, 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.

Some detail indicating the nature of the sale should be furnished.
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 nonusable.

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;

There is a compulsion on the part of the seller due to banking regulations. Normally such properties are sold to quickly cover the balance of the mortgage and are not representative market sales. (If the sale has received sufficient market exposure, it may be considered a usable sale. To be made usable, it is necessary to state the length of the market exposure and such other facts as may make it a usable sale.)
This type of sale is usually evident upon examination of the deed or following the recital.

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;

These situations are not frequent but may arise from time to time for varied reasons. In these cases, the sale price represents property characteristics that exceed the characteristics used to develop the assessed value, so the characteristics of the property assessed do not correlate with the property sold.

The assessor should note in comments that the type of discrepancy.
Example: "improvement missing – two car garage" with Assessor's Comment on usable/non-usable of the sale for the ratio study

REFERENCES:

Cranbury Twp. V. Middlesex County Board of Taxation 6 N.J. Tax 501

The assessed value of parcel could not be established by referencing public records and a simple arithmetic calculation – no comparative relationship between the assessment of the property sold and the sales price for sales – ratio purpose

Township of South Harrison in the County of Gloucester vs Director, Division of Taxation, Division of Tax Appeals, Docket S.A. 12 – 73 – 74
1972 – Size of land assessed was not size of land that was conveyed. A tract of land was assessed at a different acreage from what was sold. Assessment was based on 3.26 acres as shown in the tax records, actual size of property sold was determined to be 2.38 acres based on a survey. The difference was NOT due to a subdivision or a split-off. To include this sale would create an obvious distortion in the assessment sales ratio.

33. Sales of qualified farmland or currently exempt property.

Qualified farmland is assessed as an exception to market value and would be lacking a comparable relationship between the assessed value and sales price. If any portion of a property transfer includes qualified farmland, the ratio developed would be distorted. Sales of exempt property under this heading refer to properties where a portion or the entire property is exempt under any statute.

Sales by non-profit organizations should still be considered under NU Category 17, as previously done. Sale of government property should still be considered under NU Category NU 15.

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.

REFERENCES:

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

The valuation of qualified farmland is a constitutional exception to the same standard of value set forth in the constitution. Property assessed under the Farmland Act, N.J.S.A. 54-4-23.1, is valued based on the productivity of the land instead of market value as it exists on the assessing date, October 1 of the pretax year.

LPT News. Qualified farmland February 1965:2

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.

State of New Jersey
LOCAL PROPERTY TAX BUREAU NEWS

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Division of Taxation

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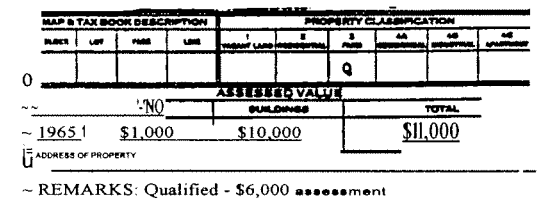
SR1·A REPORTING OF SALES OF "QUALIFIED" FARMLAND

Farms sales which include land qualified under the Farmland Assessment Act of 1964 will require special handling by assessors in reporting such sales on the SR1-A form.

In order to clearly identify farm sales involving "qualified" farmland, the following three steps should be taken:

1. In the Property Classification section of the SR1-A, insert the letter "Q" (for Qualified) in the Farm Category block.
2. In the Remarks section, insert the word "Qualified" and the assessed valuation of the land qualified under the Act.
3. In the Assessed Value section, insert the assessed valuation of the land *not* qualified under the Act, the assessed valuation of the buildings, and the total.

These three steps are illustrated below:



Uniform application of the above procedure for identifying and reporting sales of "qualified" farmland is essential in order that the Local Property Tax Bureau be put on notice to evaluate such sales for equalization purposes in the manner prescribed by the requirement of the Act and regulations promulgated thereunder. (See Reg. 16:12-10.550 Equalization - State School Aid and County Apportionment.)

Adherence to the above procedure will also prove beneficial to assessors in that it will place them on notice to determine if the sale involves a change in use and if immediate application of the roll·back provisions of the Act may be in order. Assessors may want to maintain a separate file of the SR1-A forms reporting sales involving "qualified" farmland for periodic review to check for change in use and as a ready reference and aid to assist them in computing roll-back taxes.

(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.

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 nonusable categories a taxpayer must demonstrate that the inclusion of the challenged sale was improper because the sale was not for fair market value.